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CONTROL FREAKS

VIRGINIA I. POSTREL

Thanks to the profit-seeking souls at Times Books, you don't have to be a lobbyist or congressional aide to get your hands on the text of the Clinton health-care plan. You can go to the mall and pick up a 284-page paperback copy for $8.00. But judging from the way both supporters and opponents are describing it, even the pros haven't really read the plan.

When supporters talk about it, they sound like cheery personnel officers guiding new employees through company benefits packages. "We offer two choices of plans," they say. "There's the fee-for-service plan, where you have a $200 deductible, and the preferred provider network, where you pay only $10 a visit. Which would you like to sign up for? We recommend the cheaper one."

Opponents, on the other hand, make the Clinton plan sound like just another expensive entitlement scheme: Aid for Families with Dependent Sick People. They warn of heavy payroll taxes—if you like FICA, you'll love Clintoncare—and runaway costs. They talk about the deficit and lost jobs.

Both sides treat the health-care plan as the latest lavish program for taxing and spending. One side emphasizes the benefits, the other the costs. Neither gets to the real story.

Despite the neat charts you've probably seen reprinted in your local newspaper, most of those 284 pages have nothing to do with describing benefits. And very few talk about paying for them.

The Clinton plan isn't a simple transfer scheme. It is a systematic program for destroying the health-care industry and replacing it with regional cartels, government price caps, and mass, standardized medicine. It is not about handouts or subsidies, though it includes both. It is about unbridled, unaccountable bureaucratic rule.

Sure, the plan has its silly and expensive moments. It suggests covering aerobics ("physical training classes") in the name of preventive care. It picks up everyone's therapist bills, promising a cost explosion unmatched since California started allowing worker's comp claims for "stress."

At its most absurd, the Clinton outline declares that "health plans may not terminate, restrict or limit coverage for the comprehensive benefit package for any reason, *including non-payment of premiums*." (Emphasis added.) It's easy to see where that will lead. Why pay when you can get the same care for free?

But the heart of the plan is not expensive indulgences. It is, rather, an attack on choice and competition. In page after mind-numbing page of bureaucratic detail, the plan closes every conceivable avenue of escape, plugs every possible source of diversity, eliminates every incentive for innovation. It threatens new drugs with price controls, forbids hospitals and universities to train more than a constricted number of specialists, requires urban health plans to serve rural areas, and makes paying extra for care a crime.

To read the plan carefully, to picture the world it describes in deliberately abstract language, is to begin to see the forest amid the trees. And it is The Forest of No Return. Those who stumble in never can get out. Bill Clinton is nationalizing the health-care industry and doesn't have the guts to admit it.

The centerpiece of the plan is the system of "regional health alliances." An alliance may be a state agency or a nonprofit corporation overseen by your state. The government-appointed alliance board determines which companies can offer health plans in your area. Employers and self-employed people pay premiums to the local alliance, and "it is the obligation of every eligible individual to enroll in a health plan."

The regional alliance resembles the local cable franchise—a government-created monopoly through which consumer services flow. "States may establish one, and only one, regional alliance in each area."

Like a cable company's, the alliance's prices and services are tightly regulated. Consumers have "choice" among health plans offered through the alliance, just as they can choose whether to buy Showtime or HBO from the local cable monopoly. But the number of plans is limited, and most are nearly identical. (The plan lets big companies establish their own "corporate alliances" for employees, but it doesn't let them offer plans that pay higher fees than the standard government ones.) Consumers are stuck with a single regional alliance that has no competition and thus no incentive to give good service. The only escape is to move to another region and hope the new alliance is better.

Each plan must provide a standard benefit package and price its premiums within a narrow range based on a "target" established by a National Health Board. If premiums are too high, they have to be "renegotiated" or reduced via an "assessment" (a.k.a. a tax) on high-priced plans. The Clinton outline doesn't specify what happens if no company will sell its services at the approved premium. But it does give each state the option of establishing a government-run single-payer plan. In

other words, it provides a mechanism for establishing a Canadian-style socialist system through the back door, without the messiness of a congressional vote.

Much of the plan deals with various sorts of price controls. Bill Clinton is obsessed with containing the cost of health care—he brought it up incessantly at the Little Rock economic summit. But the Clinton plan eschews any thought of making consumers more sensitive to prices. It deliberately limits out-of-pocket costs "to ensure financial protection" even as it expands "free" care not only to the now uninsured but also to people whose current insurance plan is less lavish than the "guaranteed benefits package."

With no consumer incentives to save money, the Clinton plan instead relies on draconian price controls, mostly for health-plan premiums but also for new drugs and doctors' fees. And it anticipates rationing, big time.

How can you tell? Well, there's the declaration that health-care costs won't be allowed to rise faster than Gross Domestic Product after 1997. This is a frighteningly unrealistic goal. As people get richer, they tend to spend a larger share of their income on health care. (Subsidies accelerate the trend, but they do not create it.) The only way to stop that natural trend is to institute very serious rationing and eliminate any thought of new technologies. You can indeed have 1965 health care at 1965 prices. But would you want it?

Even in Canada—the land of months-long surgery queues, where they cure kidney stones the painful old-fashioned way instead of buying lithotripters—health-care spending growth far exceeds the Clinton goal. Canadian health-care costs rose 1.2 points a year faster than GDP from 1970 to 1990, and other industrialized countries had even larger gaps.

The real tip-off to the realities of Clintoncare comes at the end of the plan's first chapter: The law establishing the program will also impose "new criminal penalties...for the payment of bribes or gratuities to influence the delivery of health services and coverage." The planners apparently envision a Soviet-style system in which health-care services are so hard to get that patients will try to bribe physicians or insurers to jump to the head of the line. To forestall such anti-egalitarian action, they threaten patients with asset forfeiture and prison time.

The plan also recreates the savings-and-loan syndrome in health care. Given the price controls (and the fact that paying premiums isn't actually required), it's quite likely that at least some companies will overpromise, only to discover that they can't cover their expenses at the premiums they charge. Rationing is one solution. So is going out of business.

If your health plan fails, you needn't worry, say the Clintonite personnel officers. Your doctor won't come collecting, and the hospital can't discharge you: "If a health plan cannot meet its financial obligations to health care providers, providers have no legal right to seek payment from patients for any services covered in the comprehensive benefit package other than the patients' obligations under cost sharing. If a health plan fails, health providers are required to continue caring for patients until they are enrolled in a new health plan."

But Clintoncare doesn't make the doctors work for free, at least not indefinitely. It covers their bills by taxing the surviving, competent health plans. First, everyone pays into a "guaranty fund" very much like the deposit insurance that gave us the S&L crisis. Then, "if a health plan fails, the state may assess payments of up to 2 percent of premiums on other plans within the alliance to generate sufficient revenue to cover outstanding claims against the failed plan."

It's not hard to picture the race to fail first. And, as plan after plan exits the market, the survivors look more and more like suckers—unless they can renegotiate to offer less service at higher prices, a tactic not unknown among regulated monopolies. For patients, there is no escape.

That, in the end, is the point. "The American Health Security Act of 1993" is about neither health nor security. It is about asserting government power and squelching private diversity. If you don't believe me, and even if you do, you should read the book yourself. ◼

PATTERNS OF FORCE

JACOB SULLUM

The day after the Justice Department released its report on the federal government's deadly confrontation with Branch Davidians outside Waco, Texas, President Clinton announced that he was doubling the number of U.S. troops in Somalia. The timing was probably coincidental, but the juxtaposition of the two events suggests some interesting parallels.

The fiascos in Waco and Somalia show how the government's use of force tends to spin out of control, acquiring a momentum of its own. This is one more reason to be skeptical about proposals for military and quasi-military operations. It's a point worth keeping in mind as the Clinton administration considers sending troops to Haiti and Bosnia. Even when the policy is clearly mistaken, even when it can plausibly be blamed on people who have since left office, politicians rarely have the guts to admit the error and cut their losses. Failing to do so, they end up with blood on their hands.

Though endorsed by President-elect Clinton, the operation in Somalia was initiated by a lame-duck Bush administration. No one pretended it had anything to do with U.S. security. The images of starving children on CNN were deemed a sufficient argument for intervention. U.S. troops were supposed to go in, protect relief efforts until the threat of mass starvation receded, and get out by Inauguration Day. The supporters of intervention did not pause to reflect on the question of what would

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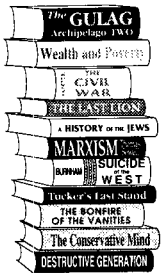

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EDITORIALS

happen after American forces left.

Now the answer is painfully clear: The country will revert to civil war, anarchy, and famine. The U.S./U.N. mission has apparently become somehow to prevent that outcome. Despite this seemingly open-ended commitment, Clinton promises to withdraw U.S. troops by the end of March. Even if he does, more Americans and soldiers from other countries are likely to die trying to restore order and create a stable government where none exists.

It need not have been this way. Long before October, Clinton could have said that the Somalia operation had seemed like a good idea at the time, but the costs had become too high and the benefits too uncertain. Then he could have withdrawn our troops as expeditiously as possible, thereby avoiding the deaths of 25 American soldiers. Instead, he has escalated U.S. involvement, arguing that the United States would look bad if it pulled out before its mission was accomplished. The operation's failure means it must continue.

Similarly, Attorney General Janet Reno never seriously considered pulling back from Mount Carmel or letting up the pressure on the Davidians. Even though the investigation that led to the initial BATF raid started under the Bush administration and the siege began before she took office, Reno did not question the government's approach. Like Clinton, she escalated.

The chain of events that culminated in the incineration of more than 80 men, women, and children last April began with a suspicion that someone in the Davidian compound might have illegally converted semi-automatic guns to fully automatic. Whatever the truth of the charges, there's no question that the BATF's raid was unnecessary, disproportionate, and reckless. The Treasury Department's report, issued in late September, confirms as much.

But once the Davidians defended themselves against this armed assault, the original weapons charges were forgotten. The four dead BATF agents became the excuse for a brutal, seven-week siege. The FBI cut off phone service, sewer lines, electricity, and water; it demolished cars and crushed bicycles; it flooded the compound with light at all hours and blared music, monk chants, and rabbit squeals at the people inside.

These tactics were supposed to encourage the Davidians to give up. But the Justice Department report reveals that FBI agents at the scene were actually working at cross purposes with negotiators trying to arrange a peaceful surrender. A more plausible explanation for the harassment is simple revenge.

Seeing all this, Reno concluded that the FBI knew what it was doing. When she sent the tanks in to knock down the walls of the compound and pump in tear gas, she said she did it for the children, the same rationale that had seemed to work for the intervention in Somalia. The Justice Department report shows this was a lie: The FBI had no evidence that children in the compound were being abused.

We may never know whether the government or the Davidians set the fire, whether it was started deliberately or by accident. But if you were trying to drive a paranoid, Messianic sect to mass suicide, you'd be hard pressed to come up with a better plan than the one the FBI executed. All this was apparent to any sensible observer, but we are supposed to believe that Reno could not reasonably have foreseen the outcome, or that her willingness to accept responsibility should immunize her from blame.

Both Reno and Clinton inherited messes from their predecessors. But they were not powerless to head off disaster. They simply did not have the courage to risk the charge of cowardice.

REASON welcomes new Assistant Editor Nick Gillespie and Art Director Barbara Burch (whose work actually debuted in the October issue). Meanwhile, Jacob Sullum has been promoted to managing editor. Nick is a former editor at various trade and teen-entertainment magazines in New York City and, more recently, a Ph.D. candidate in English at SUNY-Buffalo. Barbara is a former graphic designer at the University of Southern California. She has been hard at work creating an exciting, more reader-friendly look for REASON. Watch for it next month.

IN MEMORIAM:

AARON WILDAVSKY

Twenty years ago, wading through tome after soporific tome on public administration, I stumbled upon a book with an enticing, if unwieldy, title: *Implementation: How Great Expectations in Washington Are Dashed in Oakland, or, Why It's Amazing that Federal Programs Work at All* (1973). Inside, instead of sterile program descriptions and organization charts, I found, interspersed with Rube Goldberg cartoons, an account of human action and the pursuit of power.

This was my first encounter with Aaron Wildavsky. A political scientist with pep and perception, he became something of a hero to me. When I finally met him 15 years after first reading *Implementation*, he was everything I'd imagined: feisty, provocative, and warm-hearted.

On September 4, Aaron Wildavsky died at the age of 63. He had taught since 1963 at the University of California, Berkeley. A prolific thinker and writer, he left behind a legacy of 37 books on budgeting, presidential elections, and, most recently, issues of risk and regulation.

The title of Wildavsky's last book, *But Is It True?*, to be published posthumously, captures the flavor of his approach. He made a habit of questioning common wisdom and turning concepts inside out.

In what is likely a little-noticed foreword to *Rights and Regulation*, edited by Tibor Machan and M. Bruce Johnson (1983), Wildavsky questioned whether outlawing danger really makes us safer. Is risk reduced "by attempting to deter danger before it occurs"—the regulatory approach? Or are we better off "managing risk after it manifests itself"? In that brief essay, he set the stage for the next decade of his work.

"Almost all books on risk treat it as a bad thing to be avoided or diminished," he reflected in his 1988 book, *Searching for Safety*. Wildavsky took a different tack. He explored the idea that risk is a mixed phenomenon from which both benefits and harms emerge. "Under the right (or wrong) conditions," he wrote, "everything we need for life can also maim or kill: water can drown, food can poison, air can choke."

From this kernel of an idea, Wildavsky developed a powerful critique of regulatory policy. He emphasized the concept of "opportunity costs"—that piling on dollars to eliminate a perhaps remote risk means fewer dollars are available to respond to unexpected dangers. Regulation, he suggested, undermines resilience, our ability to "bounce back." Markets, he argued, by passing on "knowledge, diversity, wealth," enable us to respond resiliently to change.

Through all his writings, Wildavsky retained a knack for putting complex ideas into simple, even catchy phrases—like "richer is safer" or "wealthier is healthier." He was a man of immense scholarship, yet he was a down-to-earth communicator.

—Lynn Scarlett

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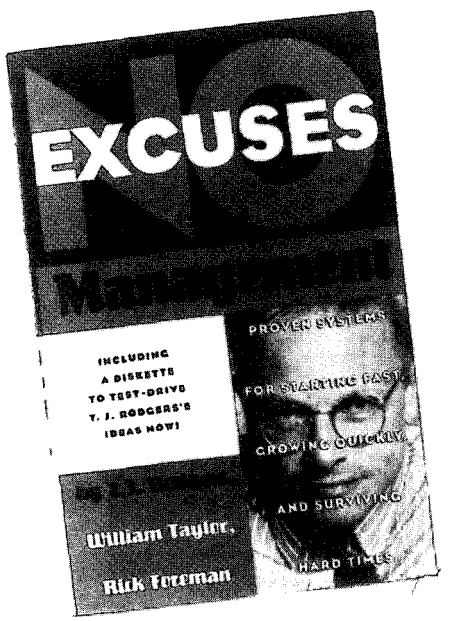

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Editorial, Advertising, and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034
(310) 391-2245

Washington Office
1001 Pennsylvania Ave., NW
Suite 200 South
Washington, DC 20004
(202) 457-8577

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P.O. Box 526
Mt. Morris, IL 61054
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Founding Editors: Manuel S. Klausner, Tibor R. Machan, Robert W. Poole Jr.

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LETTERS

Gay Fray

Thank you for the "Gay '90s" articles (Aug./Sept.). I'm sure that not all of your readers share my enthusiasm for them, and I applaud your decision to run them. I've appreciated and respected REASON from the first time I picked up an issue, and now that respect is carved in stone.

Paul G. Anater
Maitland, FL

I ENJOYED READING David Link's article and especially liked his point, too rarely allowed by homosexuals, that his sexual life is only a part (not a comprehensive whole) of the person he is.

I also think Mr. Link was right on target with his recognition that the polar groups, "religious radicals" and "gay radicals," not only mirror but seem to subtly create the need for each other with their apocalyptic thinking. Mr. Link distances himself from both groups by asserting that, while he is gay, he is not queer. I would like to suggest that there is also a group that mirrors the position Mr. Link has taken. There are Christians who realize that one's sex life is rarely his defining characteristic and that it is a dreadful mistake to reject a person whose sexuality they nonetheless consider immoral. I respect and accept Mr. Link and wish that more families would, like his, remember that it is not their responsibility to judge, but to love. Mr. Link is not queer and neither, I hope it will be acknowledged, am I a radical.

John S. Rogers
White Plains, MD

IF YOU HAVE NOTHING better to do than promote gay and lesbian "rights" with three feature articles, you can be assured that my subscription will not be renewed.

Brian J. Monahan
Littleton, CO

THE "GAY" RIGHTS ARTICLES suggest that your editorial board is in need of a long rest. "The Third Way," by Carolyn Lochhead, demands, in effect, that the term *marriage* be redefined to include homosexual relationships. The traditional family has been a bulwark of self-sacrifice for the sake of future progeny, while the homosexual community extols instead the indulgence of sybaritic impulses. Since persons engaging in same-sex sodomy cannot propagate their members without seduction, this means that two-parent families—already under long attack by Washington policy makers and cultural elitists—must be obliterated by eliminating their last legal sanctuary: the nominally recognized institution of marriage.

What sodomites do behind closed doors is their business, but insistence on redefining family relationships and societal approbation for pernicious lifestyles is more than some economic libertarians will tolerate. If we are supposed to respect the "value" of such pathologies, shouldn't we also include polygamists, or orgy-cultists, or pyromaniacal gangs, or people who share narcotics needles, in a new, expanded definition of *family*?

Gerhard W. Thielman
Ridgecrest, CA

Ms. Lochhead replies: My article did not "demand" anything, other than perhaps a more careful reading than Mr. Thielman gave it. My point was simply to assess the direction the gay rights movement might now be taking, seeing as how it has suddenly found itself at a philosophical and historical crossroads.

The marriage issue I thought particularly provocative for libertarians, because it is a state-granted sanction with broad legal implications. Clearly Mr. Thielman thought so as well.

THE THEME OF RICHARD MOHR'S article criticizing Clinton's handling of the gays in the military issue ("Military Dis-

service," Aug./Sept.) is that Clinton should have cast the issue as one of rights and pursued that strategy consistently. But Mohr does not explain the reason for his claim that military service is a right.

In fact, no such right exists. The rights of all Americans flow from the Constitution. All the rights listed in the Constitution are negative rights. There is no constitutional basis for the premise that there exists such a thing as an affirmative right to anything. A "right" to a military career would certainly fall into that category.

Government exists for the purpose of protecting the negative rights of individuals to be secure in their persons, property, businesses, and private affairs from interference by the state or other forces. The military is a means to protect those negative rights from violation by other nations or groups.

In matters of military policy, the main concern is determining what level of military capability best protects these rights and what is the most efficient way of achieving or maintaining that capability. Just as directors and managers of corporations have a fiduciary duty to operate their businesses efficiently for the benefit of the stockholders, the government's primary concern is supposed to be giving the taxpayers the best defense their money can buy.

No individual has a right to require a private-sector employer to give him a job. Indeed, it would be impossible to exercise this alleged affirmative "right" without violating the negative right of the employer to be free from interference in his business affairs. The same principle applies when the employer is the federal government.

Gilbert Martin
Smyrna, TN

AMONG OTHER THINGS, Professor Mohr asserts that "matters of rights can never legitimately be left to the tender mercies of majoritarian rule"; that "government exists for the sake of the individual" and "the individual is [not] to be viewed as a resource for society"; that "the ability to serve in the armed forces has been a defining characteristic of full citizenship"; that "government may not place people in a degraded status because of what they are, as opposed to what they do"; and that bigotry, fear, and hatred should "be given no weight at all in determining whether discrimination against a group is rational."

In our representative democracy, all policies are determined indirectly by majority rule. The Constitution and all of the laws are intended to represent the wishes of the majority. It is safer to have power reside with a majority of the people than in the hands of those who think they have both unique knowledge of what is right and the moral authority to impose it on everyone else.

Many citizens are turned down by the armed forces because of physical and mental impairments, while maintaining full citizenship rights and the respect of their fellow citizens. They are not degraded by the selection process. It is simply understood that blind, deaf, or paraplegic citizens do not make the best soldiers.

Not all opinions that differ from Professor Mohr's spring from bigotry, fear, and hatred. There are sound reasons for keeping avowed homosexuals out of the military. Perhaps the best analogy is the relationship between men and women in the military: They are segregated. They do not shower together or sleep in adjacent bunks, for the obvious reason that sharing all facilities would encourage sexual interactions that would interfere with military activities. Isn't it just as obvious that avowed homosexuals, who cannot be segregated, should not share showers, barracks, and foxholes with the objects of their sexual drive?

George L. Clark
Manhattan Beach, CA

YOUR "GAY '90S" ARTICLES are very relevant to me. I have several homosexual friends and relatives. Fortunately, our family's attitude is similar to that of David Link's—probably because our family's homosexual members seem to share his attitudinal and behavioral traits. I feel very strongly that homosexuals should not be deprived of rights to which they are entitled as "persons" under the Constitution and certainly that they should not be persecuted.

But with 26 years of active military service, I take exception to some of the positions advocated by Richard D. Mohr. During my service I encountered a num-

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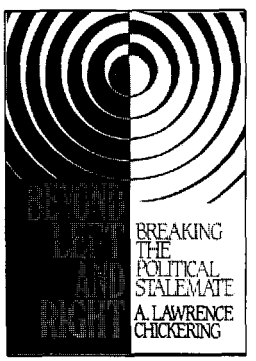

San Francisco Chronicle columnist A. Lawrence Chickering's new book *Beyond Left and Right* is garnering bipartisan raves for its outlook to how we can move beyond disagreement to make American politics work once again.

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ber of homosexual military persons. Without exception all served effectively and efficiently, and none, to my knowledge, was dismissed from the service because of his homosexuality. With one exception, all were dealt with tolerantly by their colleagues, superiors, and subordinates, and the efficiency and effectiveness of their units were not adversely affected.

This experience occurred, of course, during a period when homosexuality was officially proscribed by military regulations. The reason that the homosexual military persons of my acquaintance had no obvious clashes with comrades or the authorities was simply that they did not flaunt their homosexuality. Some stayed "in the closet," but the homosexuality of several was more or less public knowledge. The point is, nobody made a "big deal" about it.

Mohr appears to advocate the inclusion of "openly gay" persons in the U.S. military. What he means by "openly" is unclear. He argues that "government may not place people in a degraded status because of what they are, as opposed to what they do." What they "do" is precisely the problem. Our combat forces consist mostly of young virile men with raging hormones who tend to believe that they are immortal. If "openly gay" persons are integrated into the combat forces, I fear these realities may result in adverse consequences.

The "don't ask, don't tell" approach favored by defense officials and a majority of Congress appears to be an appropriate reflection of the circumstances I have experienced. Military life includes a whole lot of regulation, and regulation of sexual orientation should not be an exception.

Col. D. H. Hunter (Ret.)
Athens, GA

Mr. Mohr replies: I take no position on whether there is or is not a freestanding right to serve in the military. The constitutional rights violated by the military ban on gays are rights to equality and privacy. Equality is a right not to be degraded by the government—not to be held in lesser moral regard for reasons other than one's actions.

To understand privacy violations, think of them as parallel to violations of religious freedom. If the government doesn't throw Mormons in jail for being Mormon or doing Mormon things, but does deny them driver's licenses and jobs, we would still consider these denials violations of their religious rights—even if we think of constitutional rights basically as "negative liberties." So, too, if the government doesn't throw gays in jail, but does deny gays jobs in the military for being gay or having gay sex, it still violates privacy rights, even if we basically view privacy rights as "negative liberties."

At a minimum, rights are minority claims against democratic majorities. Otherwise it would make no sense to have democratically enacted laws declared unconstitutional. If, as Mr. Clark claims, all rights are products of democracy, then either there are no rights or the notion of what a right is has been revised beyond recognition.

Crazy, blind, deaf, and paraplegic citizens are disqualified from serving in the military because they are unable to perform necessary military functions. In none of these conditions does the ability depend upon other people's perception of the condition. In contrast, other people's perceptions are the only thing that allegedly disqualifies gays, who (as every general is willing to admit) have served admirably as soldiers. It is bigotry alone that is keeping them out.

This year the Pentagon commissioned a Rand Corporation study on the effects of integrating openly gay troops. It found there would be some tensions (there always are tensions in the military) but none that could not be overcome if the Pentagon exerted leadership. But Colin Powell, Les Aspin, and Bill Clinton weren't up to leadership. Instead, Clinton, pandering to prejudice, dumped on gays in a desperate attempt to overcome the wimp factor.

License to Steal

Under current law, police can go back a few years through arrest records to find forfeitable property ("Ill-Gotten Gains," Aug./Sept.). Think about it. Where did you buy that used car? Could the last owner have used drug money to buy it first? If so, it's up for grabs.

A bill the California Legislature is considering, SB1158, would allow police to seize innocent owners' property if they aren't vigilant enough to make sure their tenants aren't selling drugs. The government doesn't even have to charge the tenants. And if you were foolish enough not to spy on your tenants, the government also takes the rent they paid you and any assets you bought with the money.

This will not stop with drug crimes. The White House has recently announced that the federal government will apply forfeiture laws to the transportation of illegal aliens. The next step will be to forfeit the assets of people who hire (or rent to) illegal aliens.

Nancy Upfold
Running Springs, CA

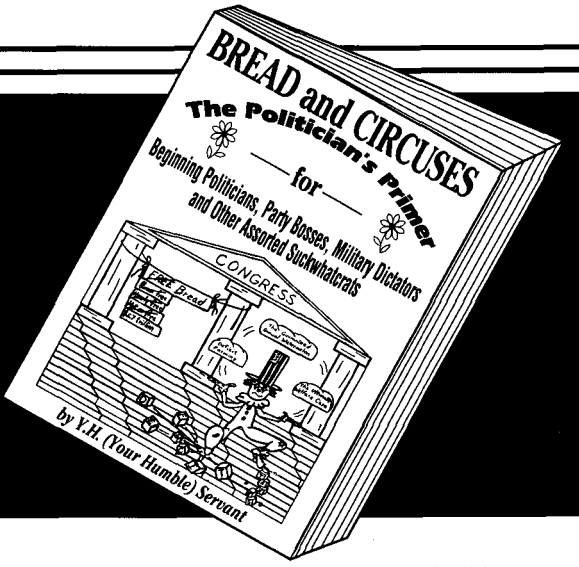
I WORK FOR A FLORIDA company that helps various Southern states recruit businesses to their areas. After California Assembly Speaker Willie Brown and the Democratic legislators proposed forfeiture of businesses that employ illegal aliens, our company sales literature was revised to acquaint corporations with this latest anti-business measure from California.

My boss says that just the proposal of such an incredible penalty will be a sufficient deterrent to prevent any large or medium-size business from moving to the Golden State. "Imagine—if just one middle manager cuts corners or inadvertently hires an illegal worker, the entire business could be lost," he said gleefully.

Patricia Shuler
Boca Raton, FL

Correction: Damn that metric system. Due to an editor's error in "Sweet Dreams" (Trends, Oct.), we incorrectly stated the "acceptable daily intake" of cyclamate. It is 0.0017 pound, or 0.03 ounce, for someone weighing 150 pounds—equivalent to about 6.25 12-ounce cans of diet soda a day. The dose at which adverse effects start to appear in rats is 100 times that level—some 625 cans a day.

WHAT IS A SUCKWHAT?



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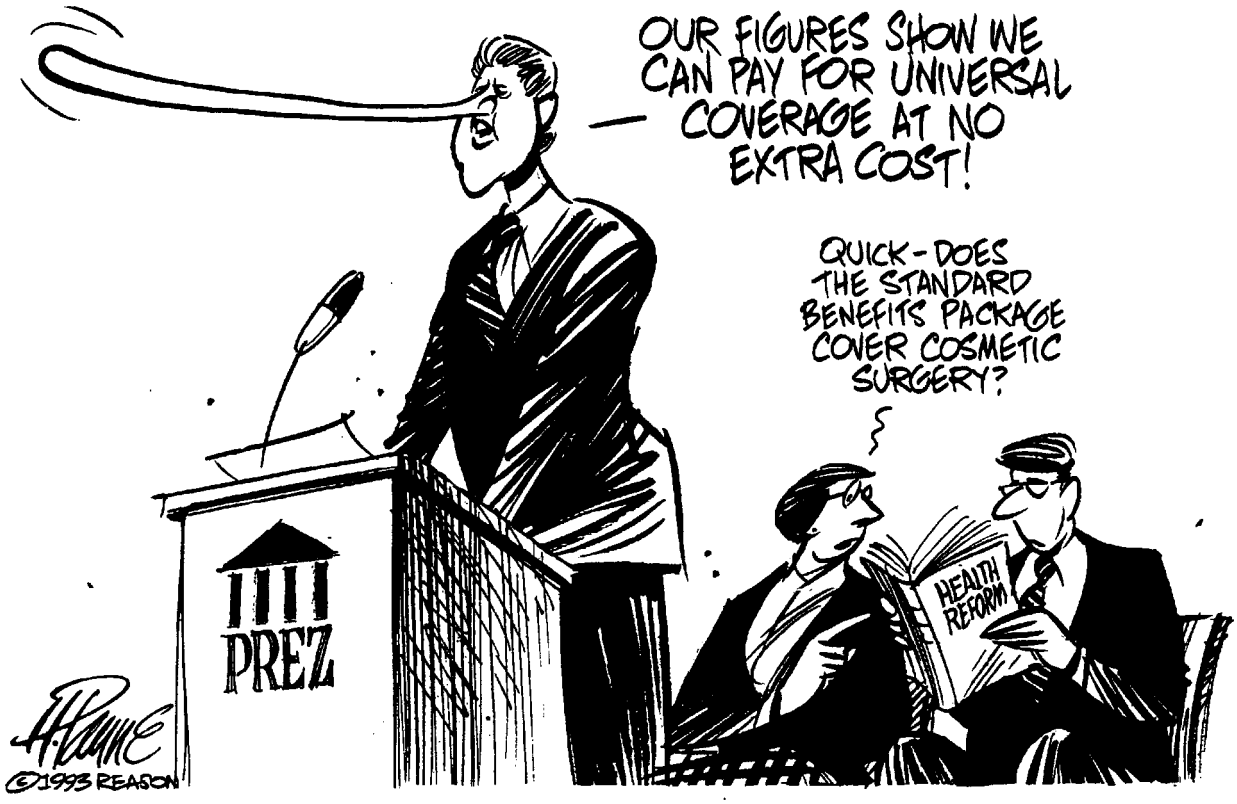
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HENRY PAYNE

CHIP BOK

The rap group Cypress Hill isn't into music about shooting cops or referring to women as females of the canine species or gardening tools. No, they rap about getting stoned on marijuana. That's been enough to propel them to the top of the record charts. But it hasn't won them any friends in law enforcement. Said Glen Levant, a former Los Angeles Police Department deputy chief, "It's not inconceivable that these guys could be cited for aiding and abetting a criminal act."

In Ohio, state Rep. Vermont Sykes has demanded that President Clinton appoint a minority to the U.S. marshal's job in Cleveland because, he says, the position has always been held by a white male. Sykes seemed a bit confused when he was informed that the current marshal, Albert Moore, is black. Or maybe Moore just doesn't count because he's a Republican appointed by George Bush.

Looking to sell or lease a house? The *Seattle Post-Intelligencer* provides a list of words that, when used in classified ads, might lead to discrimination suits under the Fair Housing Act. Among them: *senior discount*, *mature*, *Christian*, or *executive*. I guess this means there are no mature minority executives.

Meanwhile, the citizens of Alabama have trouble with a capital *T*. That rhymes with *B*. And that stands for *Baptists*. According to an official county-by-county estimate from the Southern Baptist Church, 46 percent of Alabamans are going to hell unless they repent and get saved.

Meanwhile, in Canada, authorities seized two books by feminist author Andrea Dworkin that were en route to a book store. The books allegedly violate Canada's antiporn law, which incorporates the legal theories of Dworkin and Catharine MacKinnon.

SCOTT STANTIS

In Washington, D.C., Mario Cuomo's son Andrew proved that he is a chip off the old blockhead. The younger Cuomo, an assistant secretary of housing and urban development, complained to aides that his desk kept trembling. They opened a drawer and found Cuomo's pager, which vibrates when activated, displaying a dozen unanswered phone calls.

Talk about cradle-to-grave socialism. In Stockholm, a woman lay dead in her apartment for three years while government computers automatically paid her pension and her bills. Her body was finally discovered when her landlord, after repeated attempts to talk to her about renovating the apartment, had police knock down the door.

Americans are voting with their pocketbooks, but politicians don't seem to be listening. Fewer than 18 percent of taxpayers earmarked a dollar for the presidential-campaign fund this year. Congress has reacted to this situation by tripling (to $3.00) the amount people may check off.

The Snapple Beverage Corp. has started a publicity campaign to counter rumors that the company is affiliated with the Ku Klux Klan. The rumors, which aren't true, claim that the small *k* that appears on Snapple labels stands for the Klan. The *k*, in fact, stands for *kosher*. And knowledgeable rumor mongers everywhere know that its presence indicates that a company is paying tribute to the Zionist conspiracy that rules the world.

In New Hampshire, James Hooper has filed a wrongful arrest suit against the city of Nashua. Hooper was stopped by police as he left the restaurant where he worked. They were about to let him go when they discovered what they said was cocaine on the ground where he was stopped. Hooper was unable to make bail and spent 64 days in jail before the police finally got around to testing the powder. It was baking soda.

—Charles Oliver

Reformers' Resolution

The original signers of the Hoover Resolution, which calls for a reexamination of national drug policy, seemed to be the usual suspects: 21 critics of the war on drugs, including such familiar names as Milton Friedman, Baltimore Mayor Kurt L. Schmoke, and former Secretary of State George Schultz.

But since February the resolution has attracted support from a wide range of people, many of them not previously identified with the reform movement. Signers include more than a dozen state and federal judges, several state legislators, four police chiefs, and the mayors of San Francisco, San Jose, Oakland, and Upland, California.

The Hoover Resolution criticizes the attempt "to resolve drug abuse problems through the criminal justice system" and calls for "medical and social solutions" instead. It asks the president and Congress to appoint "an objective commission...to recommend revision of the drug laws...in order to reduce the harm our current policies are causing."

Clifford Schaffer, the California computer consultant who helped organize the resolution, says it is designed to attract a broad coalition of people who don't like the current approach to drug policy. By emphasizing "harm reduction" and calling for an objective study, the resolution has attracted support from black leaders, including two ministers from L.A.'s First AME Church, and others who are wary of legalization.

The idea of a drug-policy commission is catching on. In September the California Legislature approved a bill introduced by Assemblyman John Vasconcellos (D-San Jose), one of the Hoover Resolution's signers, that would create a 25-member California Task Force to Prevent Drug and Alcohol Abuse, charged with studying drug abuse, compiling research on prevention programs, and measuring "the costs of the various components of the current war on drugs." Gov. Pete Wilson was expected to veto the bill.

Also in September, U.S. Rep. Don Edwards (D-Calif.) introduced a bill to establish a 13-member Commission on National Drug Policy that would analyze both the current approach and possible reforms. "We have already tried what is politically popular, and the result has been ruined lives, devastated communities, and overcrowded prisons," Edwards said. "Now it is time to focus on policies that will work."

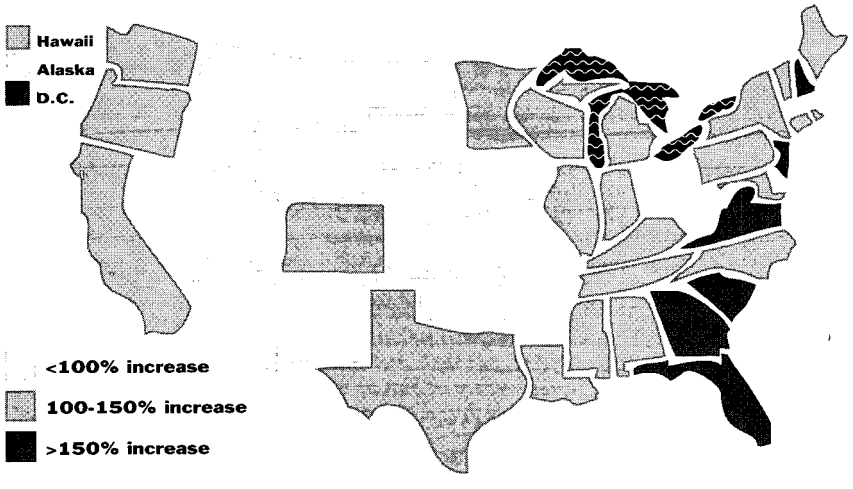
—Jacob Sullum

U.S. Rep. Don Edwards says, "We have already tried what is politically popular. ...It is time to focus on [drug] policies that will work."

The Number of the Beast

In 1991, the Tax Foundation reports, state and local governments collected $666 in property taxes for every man, woman, and child in America. That was 122-percent more, in 1991 dollars, than the per-capita figure for 1980: $300, the post–Tax Revolt low point. The District of Columbia saw the biggest increase—a huge 329 percent jump, from $344 in 1980 to $1,475 in 1991. The smallest increase was in Alaska, where per-capita property taxes rose 35 percent, from $900 to $1,213.

Real Increases in Per-Capita Property Tax Collections



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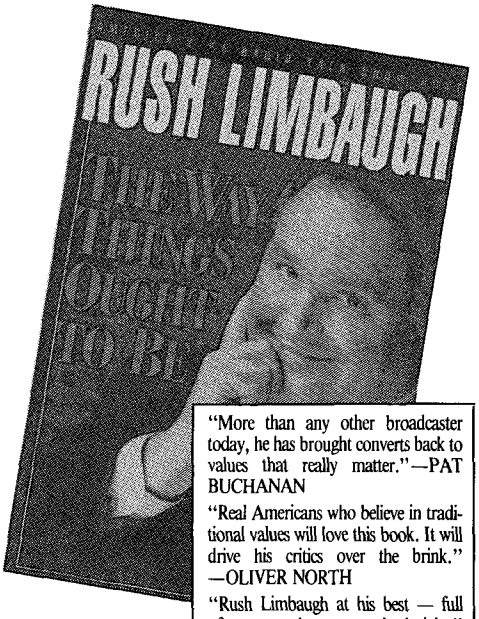

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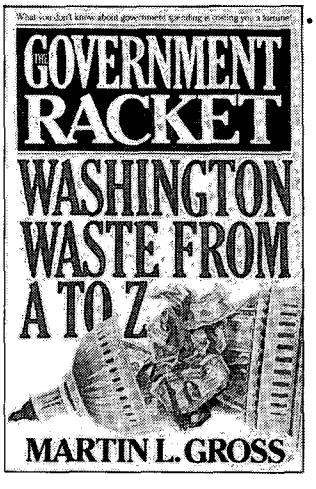
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BALANCE SHEET

Assets

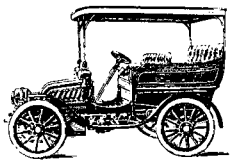
Pot Sweetener. The California Legislature endorses medical marijuana. Senate Joint Resolution 8 urges the federal government to legalize marijuana use for glaucoma, cancer, and AIDS patients. In the meantime, Senate Majority Leader Henry Mello wants the government to curtail prosecution of marijuana's medical users.

Venetian Find. In January, the Italian government will privatize three large banks—Banca Commerciale Italiana, Credito Italiano, and Istituto Mobiliare Italiano—that control $185 billion in assets. *Financial Times* says Prime Minister Carlo Ciampi "has put public share offerings [of state firms] at the top of his government's agenda."

House Cleaning. Pressured by first-term reformers, Congress might have to obey its own laws. New Hampshire Reps. Christopher Shays (R) and Dick Swett (D) sponsor a bill that would subject members of Congress to the same civil-rights, employment, and safety regulations they force on the rest of us. The bill has 230 cosponsors, notes *National Journal*, "because of aggressive lobbying by the freshman class."

Right Choice(s). Kiss your local phone monopoly goodbye. As part of this year's budget deal, the Federal Communications Commission will auction off part of the airwaves to phone companies. The FCC's plan will let as many as seven wireless companies compete for your phone calls. And, reports *The New York Times*, since wireless technologies are 20 times more efficient than basic cellular, wireless "could [already] be competitive with conventional telephone service."

Liabilities



Auto Follies. The Pentagon's next mission: Building cars. The White House and the Big Three combine to design roomy, fast, safe, super-efficient roadsters. Prototypes of such cars already exist. But, as the *Los Angeles Times* reports, "they have all been too light, too small or too weird for commercial development." Or too expensive. Take the 100-mpg General Motors Ultralight: Says a G.M. spokesman, "We'll sell you one tomorrow, but I need about 6.5 million bucks."

Death Rays II. The FDA wants your cellular phone. (See "Fear of Phoning," June.) Food and Drug Administration Deputy Director Elizabeth Jacobson chastises the Cellular Telephone Industry Association for its "unwarranted confidence" that cellular phones are safe. "Although there is no direct evidence linking cellular phones with harmful effects in humans," she says in a letter to the CTIA, "a few animal studies suggest that such effects could exist."

Knowledge Problem. One underappreciated shortcoming of Hillarycare: The National Health Board will freeze out new but unproven health practices. Three decades ago, doctors prescribed a sedentary lifestyle for heart-attack survivors; now they push patients to exercise early and often. Warns trend spotter Michael Schrage, "To make 37 million people eligible for medical procedures that don't really work can hardly be considered a bold advance in public health."

Garbage Cops. In Newark, New Jersey, says *Nation's Cities Weekly*, "sanitation enforcement officials" have issued 500 summonses this year to individuals and businesses who have violated the city's recycling laws. Trash officers surreptitiously photograph garbage offenders and present the photos as evidence in court. Fines range from $25 to $1,000. Before long, forensics teams may dust stray cans for fingerprints.

—Rick Henderson

Rand in Russian

"I would love to translate the whole book myself!" William Milonoff, co-chairman of the St. Petersburg Youth Liberal Club, says of *Atlas Shrugged*. "But I don't have the time."

With several friends, Milonoff, a former economics student who studied English for 11 years, began translating the works of Ayn Rand into Russian in the fall of 1992—just for the heck of it. Now the Liberal Club—an offshoot of Russia's Free Democratic Party established in January for young business people and students to meet weekly for coffee and discussion of news and economics—oversees the translation and publication arrangements for Rand's works.

We the Living and *Anthem* are ready to go to press, and eight college students are busy translating *Atlas Shrugged*. Fluent in English, the students are working for pocket money, earning about a dollar a page.

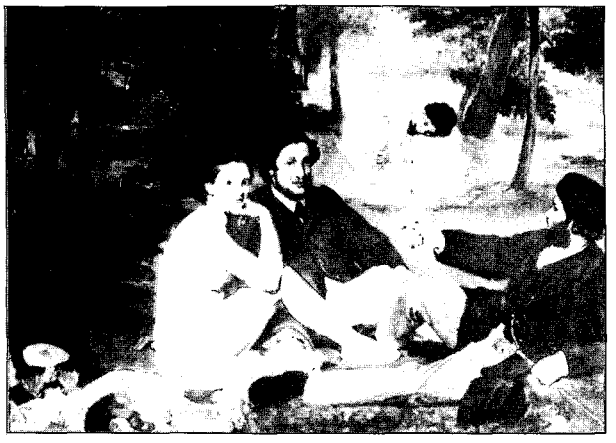
Milonoff says the Liberal Club also hopes to begin publishing a series of classical-liberal works in Russian, starting with Henry Hazlitt's *Economics in One Lesson* and then maybe Frédéric Bastiat's *The Law*. He estimates that translation and printing should take about two or three months for each book.

"Distribution is not a problem at all," says Milonoff, because schools, universities, and wholesalers are eager to have the books on their shelves. But money is another matter: The club planned to print 10,000 to 15,000 each of Rand's books. Yet under the agreement with the Ayn Rand Institute in Los Angeles, which owns the copyrights to Rand's writings and has extended those rights to Milonoff's group for three years, the club must print a minimum of 50,000 copies of each book—a much more costly undertaking. A spokeswoman for the institute declined to discuss the arrangement.

Nonetheless, Milonoff is optimistic about the long-term success of his group's publication venture. "In Russia right now people are interested in just one business: trade," he explains, and the business-driven atmosphere is highly receptive to what he calls the club's "free-market attack on Russia."

—Elizabeth Larson

Nudes and Prudes



Many states prohibit completely nude dancing in businesses that serve alcohol, but owners of strip joints can avoid this rule by cutting the booze and keeping the nudity. Legislators in five states—Missouri, Utah, Oregon, Tennessee, and Ohio—recently introduced bills aimed at such non-alcoholic "juice bars." But the measures were so sloppily worded they would have prohibited nudity in all businesses, on all public lands, and, in some cases, in private homes.

Encouraged by the 1991 Supreme Court decision *Barnes v. Glen Theater*, which upheld an Indiana law that bans mere nudity (not just nudity accompanied by lewd or obscene conduct) in public places, the legislators set out to ban as much nudity as they could. In their zeal, the authors of the most extreme measures may have left no room even for changing clothes or showering. The Missouri bill would have made "public indecency"—appearing nude or permitting nudity in any business or on public property—a felony punishable by up to five years in prison. Pat O'Brien, director of special projects for the Naturist Society, notes that someone who dived into a pool and lost his bathing suit could have gone to jail under this proposal.

The bill also would have made "indecent exposure"—nudity in any non-public place—a misdemeanor. Joyce Armstrong, director of the Missouri chapter of the ACLU, says this law would have applied not only to all plays including nudity and to models in sculpture classes but technically to all nudity within the home.

The anti-nudity measures alarmed nudists, whose parks would have been categorically proscribed, and naturists, who could have gone to jail for skinny-dipping in remote rivers. The Naturist Action Committee and the Ohio and Missouri branches of the ACLU were able to get the language of the bills in those two states narrowed. As approved, the laws target "adult cabarets," which are businesses serving food or beverages where employees work in the nude. Nudists are still worried that employees who service vending machines or work behind snack counters at their parks may be affected by the laws.

The bills in Oregon and Utah did not make it to a vote, and the Tennessee bill did not pass. But nudists expect similar measures to appear in this legislative session.

—Jacob Kramer

FOUR BY FIVE

STRIKE A BLOW AGAINST CIVIL ASSET FORFEITURE

I, an ordinary Houston businessman, have been, for more than a year, locked in what for me is a life and death struggle with the U.S. Customs Service over the seizure of ordinary, plain vanilla, oil-refining equipment that the Customs Service seized. Customs alleges this equipment was destined for Libya. It was not.

Along with the seizure of the equipment, I was a recipient of the infamous "midnight knock at the door" when Customs gunmen with a search warrant broke into my home, seized and refused to return business and private records including my passport.

I solicit contributions to aid me in my defense against over-zealous prosecutors, self-righteous bureaucrats and other tender mercies of the U.S. government. A detailed account of my story is available upon request.

Please make contributions to: Larry R. Duncan Legal Defense Fund
c/o Looper Reed Mark & McGraw
Nine Greenway Plaza, Suite 1717
Houston, TX 77046
Attn: David Cragle, Trustee

C.R.I.M.E.S Against Nature

The new vice crusade is turning justice upside down.

By Rick Henderson

In 1987 Charles Donahoo's company, Charlie's Wrecking and Salvage Inc., demolished a plastics plant, releasing one pound of asbestos fibers from insulation into the atmosphere. In 1989 Donahoo made history. For not telling regulators about the pound of fibers, he became the first person convicted of a felony under the Comprehensive Environmental Response, Compensation, and Liability Act, better known as Superfund. He was sentenced to three years in prison for that crime, plus another year under the 1970 Clean Air Act.

But Donahoo was lucky. The judge reduced his prison term to six months with three years of probation and fined him only $75. Had he been convicted a few months later, such leniency would have been impossible. In 1989 the U.S. Supreme Court upheld the authority of the U.S. Sentencing Commission to impose mandatory prison terms for what judges once regarded as regulatory infractions. If the commission's guidelines on environmental crimes had been in place when Donahoo was convicted, he would still be in prison today.

Donahoo's story, though particularly egregious, is not an isolated case. While most of the country was focused on the war on drugs, the Bush administration was creating a more lasting legacy, a new category of vice crime: the environmental offense. Like laws against drug use or prostitution, environmental prosecutions are meant not to protect persons or property but to send a message about values. So environmental-law enforcers are subject to continuing pressure to up the ante, to send a stronger message through more arrests and prosecutions, stiffer penalties, and a wider range of crimes.

Traditional criminal laws can punish deliberate actions to harm persons or property, such as poisoning a water supply or dumping debris on someone else's land. Civil codes can require cleanups and monetary damages in accident cases. But neither category of traditional law pays homage to green values. As then-Attorney General Richard Thornburgh told the annual meeting of the National District Attorneys Association in 1989, "A polluter is a criminal who has violated the rights and the sanctity of a living thing—the largest living organism in the known universe—the earth's environment."

By defining all pollution as a crime, Thornburgh's speech marked a turning point. Environmental law was (and still is) a highly technical, jargon-filled field, more akin to tax or insurance law than homicide or robbery prosecution. The goal, until recently, was to deter polluters and clean up messes in the most efficient possible way.

Indeed, when University of California-Irvine law professor Joseph DiMento surveyed state and federal law enforcers for a 1986 book on environmental compliance, more than half "reported that when criminal sanctions are available [in environ-

mental cases] the enforcer does not pursue them." DiMento concluded, "Successful careers in the law will only rarely be made from pursuing pollution control criminals."

But today Thornburgh's attitude is widely shared by both politicians and the general public. "Judges [considering an environmental prosecution] once asked, 'Is this a criminal case?'" says Joseph G. (Jerry) Block, the head of the Justice Department's Environmental Crimes Section from 1988 to 1991. "That's different now. Their attitude is, 'Kill the bastards.'"

Although the Environmental Protection Agency hired its first criminal investigators in 1982, criminal prosecutions remained limited to unusual cases until the Bush administration. In fiscal 1983, 40 federal environmental criminal indictments were handed down. All led to plea bargains or convictions, with penalties totaling $341,000 and five years of prison time. By fiscal year 1992, however, the number of cases had increased five-fold—to 191 criminal indictments leading to 104 pleas or convictions, $163 million in criminal fines, and 34 years of prison time. Justice Department statistics show that 94 percent of all the fines and penalties ever imposed and 69 percent of the actual prison time that will be served for environmental crimes were handed down from fiscal 1989 through 1992.

Over the next few years, we can expect the number of criminal prosecutions in environmental cases to grow dramatically. In November 1990 Congress, with the blessing of the Bush administration, voted to increase the number of criminal investigators inside the EPA from 60 to 250 by 1995. Attorney Judson Starr, who became the first head of the Justice Department's Environmental Crimes Section in 1987, says the numbers game alone mandates that "Bush's ceiling [on criminal prosecutions] has become Clinton's floor."

Nor are federal prosecutors alone. State and local law enforcers are putting an increasing number of business operators, environmental compliance officers, and landowners behind bars when they violate environmental laws. At every level of government, individuals who previously would have faced fines or probation are going to prison—often for transgressing technical rules that, says one former federal prosecutor, "virtually anyone in the construction business will violate." When everyone is guilty, prosecution becomes arbitrary, giving the government nearly unlimited power. Consider these targets of the new vice squads:

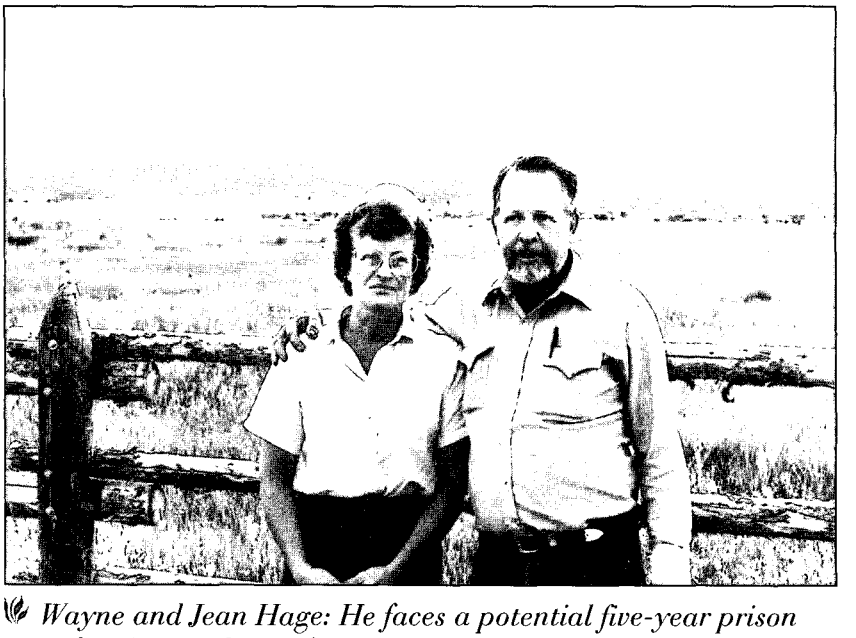
◆ Nevada rancher Wayne Hage faces a potential five-year sentence under the Clean Water Act for "redirecting streams" by hiring someone to clear scrub brush from irrigation ditches on his property. The ditches have been in use since the turn of the century.

◆ Todd Ross Shumway, an Arizona construction worker, received 18 months in state prison for dumping two loads of construction debris in the desert. A state environmental regulator said the debris wasn't hazardous waste but "a lot of sheet rock, some metal, wood boxes, and broken brick and tile."

◆ Rich Savwoir, owner of the US 1 Auto Parts Store in Bethpage, New Jersey, faces a one-year prison term and a $10,000 fine because he didn't post a sign stating that his store accepts waste motor oil for recycling. Savwoir says that on the day in question the sign was down because a window-washer was working on the store. The state Department of Environmental Conservation says Savwoir's arrest in April was the agency's first attempt to enforce the law, which took effect January 1, 1992.

◆ Harvey Van Fossan of Springfield, Illinois, was convicted in 1989 of violating the Migratory Bird Treaty Act, fined $450, and given three years of probation. Ordered by city officials to get rid of the pigeons that were creating a nuisance on a vacant lot near his home, Van Fossan had killed two common grackles and two mourning doves with strychnine-laced corn. A neighbor sent the dead birds to the Smithsonian Institution, and after an autopsy, local officials decided to prosecute. (Under the treaty, shooting birds is OK; poisoning them isn't.) The prosecutor declared this "one of the most important cases" in his office—even though there are more than 400 million such birds in North America. Like Donahoo, Van Fossan was convicted before the Sentencing Commission's guidelines took effect. As he upheld the conviction on appeal, Judge Frank Easterbrook of the Court of Appeals for the Seventh Circuit noted that, under the guidelines, Van Fossan could have been fined as much as $5,000 and sentenced to six months in jail. "Van Fossan should count himself lucky," wrote Easterbrook.

Unlike drug use or prostitution, environmental crimes can take place inadvertently, as a side effect of normal productive activities. Indeed, in a recent national sur-



JON CHRISTENSEN

Wayne and Jean Hage: He faces a potential five-year prison term for clearing brush from irrigation ditches on his ranch.

In a recent national survey of more than 200 corporate general counsels, only 30 percent of the attorneys said full compliance with all state and federal environmental laws is even possible.

vey of more than 200 corporate general counsels by *The National Law Journal* and Arthur Andersen Environmental Services, only 30 percent of the attorneys said they believed that full compliance with all state and federal environmental laws is even possible. Two-thirds said their companies had at some time in the past year violated some environmental regulation.

And no wonder. The 1990 Clean Air Act will eventually produce 60,000 to 80,000 pages of regulations, requiring even a single company to collect millions of pieces of data on air emissions. "Try arguing for 100 percent compliance with those kinds of numbers," Frank Friedman, a Los Angeles attorney and the author of a textbook on corporate environmental management, told *National Law Journal*. Not every regulatory infraction entails a crime, but the complexity of the regulations makes inadvertent criminal conduct more likely.

Under standards originally applied to misdemeanor health-and-safety regulations, prosecutors in environmental cases don't have to prove *mens rea*, or a "guilty mind," the intent traditionally required for criminal charges. In *U.S. v. Freed* (1971), the Supreme Court ruled that a defendant doesn't need to have a "guilty mind" to be convicted of violating a law in "the expanding regulatory areas involving activities affecting public health, safety, and welfare."

To send someone to prison under such "strict-liability" laws, a prosecutor does not have to prove that a person meant to harm others or even that the actions caused any actual harm. Proof of technical violations is all the government needs. In a 1975 case, *U.S. v. Park*, the Supreme Court affirmed that an "individual is or could be liable under [the Food and Drug Act], even if he did not consciously do wrong."

The majority in *Park* also stated that a supervisor can be held responsible for the actions of lower-level employees, even if the supervisor doesn't know what the employees are doing. (This is called the "responsible corporate officer" doctrine.) More recent decisions haven't clearly stated when an individual could *not* be liable.

Violations of the Food and Drug Act, however, carry only misdemeanor penalties. In his dissent in *Park*, Justice Potter Stewart wrote, "A standardless [misdemeanor] conviction approved today can serve in another case tomorrow to support a felony conviction and a substantial prison sentence." Stewart's warning has come to pass.

One oft-cited case involves environmental engineer Bill Ellen, who served a six-month prison sentence for moving dirt. In 1987, Chicago commodities trader Paul Tudor Jones II hired Ellen, who had once regulated wetlands for the Virginia Marine Resources Commission, to build duck ponds on Tudor Farms—a $7-million development on 3,200 acres Jones owns in Dorchester County on Maryland's Eastern Shore.

The development included fresh-water duck ponds (whose water tables would be controlled by hidden pumps) and enough crops and ground cover to attract migratory birds for hunters. It was a big, disruptive project—the kind environmentalists hate. But Ellen argued that he followed environmental regulations to the letter, obtaining 38 separate development permits and hiring two former Maryland regulators who, when they had worked for the state, had helped draw maps that separated wetlands from uplands.

As construction on Tudor Farms proceeded, the Bush administration altered not only wetlands protection but also how wetlands were defined, adding millions of acres of private property to the nation's wetlands inventory. The new, broader definition increased the amount of wetlands in Dorchester County from 84,000 acres to more than 259,000 acres—and now included, regulators argued, Tudor Farms.

Bill Ellen was caught in the bureaucratic shuffle. On March 5, 1989, a federal grand jury indicted Ellen. But the indictment also implicated Jones on the grounds that he was improperly supervising Ellen's work. A number of people familiar with the case believe the government's real target was multimillionaire Paul Tudor Jones, a flashy Gordon Gekko type. Indeed, Ellen said prosecutors offered to reduce the charges against him if he testified against Jones. Ellen refused, telling *Insight*, "I didn't think we had done anything wrong."

In May 1990, Jones decided to cut a deal. He agreed to pay a $1-million fine and make a $1-million contribution to the National Fish and Wildlife Foundation; he also received 18 months of probation, during which he could not hunt birds. That same month, federal prosecutors charged Ellen with six counts of violating Section 404 of the Clean Water Act of 1972. Prosecutors claimed that Ellen had illegally altered a dozen acres of an 86-acre wetland; Ellen countered that he had obtained the permits to do that work, and had, in fact, created more than 50 acres of additional wetlands. So to convict Ellen, the government had to rely upon a technical violation: Ellen had defied a "cease and desist" order and let workers move two truckloads of dirt from one spot on the property to another. According to the federal wetlands manual, moving dirt can constitute illegally filling a wetland.

In January 1991, a Baltimore jury convicted Ellen on five of the six counts. Property-rights advocate Peggy Riegle, chairman of the Fairness to Land Owners Committee and a friend of Ellen's, says that because Paul Tudor Jones agreed to pay a fine the jury believed *somebody* had to have committed a crime.

At his sentencing hearing in April 1992, Ellen argued that he had created wetlands that improved the local environment. Prosecutors disagreed. An article written by Assistant U.S. Attorney Jane Barrett in the Fall 1992 journal *Environmental Law* argues that Ellen's actions "resulted in the illegal filling of many acres

of very valuable and rapidly disappearing wetlands on Maryland's Eastern Shore." Quite an accomplishment with only two truckloads of dirt.

Bill Ellen is one of several individuals targeted in high-profile prosecutions because they altered wetlands without obtaining the necessary permits. Government officials have interpreted the Clean Water Act of 1972, which regulates "the navigable waters of the United States," to include control over "wetlands," which are not specifically mentioned in the act. (See "The Swamp Thing," April 1991.)

The Clean Water Act isn't the only environmental law that blurs traditional notions of criminal liability and intent. So does the Resource Conservation and Recovery Act, which regulates toxic wastes. The statute allows criminal penalties for any person who "knowingly transports...any hazardous waste identified or listed [under this law] to a facility which does not have a permit." (See "A Hazardous Waste," October 1989.)

A 1989 U.S. Circuit Court of Appeals decision says a defendant doesn't have to "know" he is transporting a listed hazardous waste to be criminally liable. He merely must be aware that the material is "not an innocuous substance such as water." In standard criminal cases, says former Justice Department prosecutor Starr, "your defense is [based on] the mental state of your client. Your only out in an environmental case is proving absolute ignorance of reality."

Consider Robert Wells, a vice president of North American Philips, who was indicted on criminal charges for illegally disposing of a RCRA hazardous waste. An employee of the Louisiana Department of Environmental Quality (LADEQ) saw 12 barrels by a roadside. The barrels contained two chemicals that are listed as hazardous wastes; since there were no labels that indicated who owned the barrels, the LADEQ employee tried to contact the five companies that manufactured those chemicals. Attorney Thomas C. Green, who represented Wells, says three of the companies were out of business and the person the LADEQ employee contacted at the fourth company told the regulator to get lost.

The regulator finally reached Wells, who was closing the books on Than, a former subsidiary of Philips that manufactured pesticides. The regulator called Wells at the Philips office in Kansas City, told him he had found 12 barrels of Than's "product," and asked Wells to take care of it. The LADEQ employee never told Wells what was in the barrels.

Green says Wells assumed the regulator was in fact describing materials that belonged to Than. Wells asked a Philips environmental consultant who worked in Pennsylvania to see if the barrels belonged to Than, and if so, to properly dispose of them. This consultant called ChemWaste, the company that normally handled waste disposal for Than, and told ChemWaste to pick up the barrels and dispose of whatever was in them. (It turns out that the barrels did not belong to Than.)

Without telling Wells what they were doing, two ChemWaste employees collected the drums, took them to a mini-warehouse they rented, left them there, and sent Wells a bill. The stuff inside the barrels eventually started to smell; the odor tipped off neighbors, who asked law-enforcement agents to investigate. Wells, the LADEQ regulator, and the ChemWaste employees were charged with unlawfully storing a RCRA hazardous waste. (The regulator and ChemWaste employees were also charged with disposing of and engaging in a conspiracy to dispose of the wastes.)

As a responsible corporate officer, Wells was charged with criminal liability for storing the wastes, even though he was never told what was in the barrels, he did not know what the ChemWaste employees did with the materials inside, and the responsible corporate officer doctrine does not apply in RCRA cases. Wells was acquitted (the other three defendants weren't), but Green says it was clear the government viewed a vice president of a huge multinational corporation as a juicy plum for environmental prosecutors to pick.

Even people who, like Wells, are found innocent have to pay for their alleged "crimes"—in time, reputation, anxiety, and cold, hard cash. Fighting such charges is both difficult and expensive. Oklahoma criminal-defense attorney Jerry McCombs estimates a competent environmental defense will cost between $250,000 and $500,000. The federal government will often spend that much or more to prosecute. In *U.S. v. Goodner*, a RCRA case involving the operator of an aircraft painting and repair shop, McCombs says Junior Goodner spent $300,000 to have his conviction overturned on appeal. The feds said they spent more than $468,000 on their prosecution.

Bill Ellen and his family: He spent six months in prison for moving two truckloads of dirt.

FAIRNESS TO LAND OWNERS COMMITTEE

Criminal-defense attorney Jerry McCombs says a competent environmental defense costs between $250,000 and $500,000. The federal government will often spend that much or more to prosecute.

Despite the cost, some defendants can't afford *not* to fight. Consider the case of James A. and Mary Ann Moseley, Missouri farmers who were accused of violating the Clean Water Act. They had built a levee to prevent their farm from flooding. Two weeks before their trial started in 1991, the Moseleys were prepared to settle with the government. But prosecutors sought a criminal fine of $25,000 for each day the levee was in place; by then, the fines totaled more than $14 million. So the Moseleys hired John Arens, a Fayetteville, Arkansas, attorney who often represents farmers in wetlands cases.

During the Moseleys' trial, Arens asked a wetlands expert what might happen if the Moseleys decided to have a picnic near the levee and play some softball. Imagine the judge steps up to bat, Arens said, and knocks some dirt from his shoes back onto the field. Would this technically violate the Clean Water Act? The expert said yes.

As the jury deliberated, members asked the judge for copies of the "wetlands law." When all he could come up with were regulatory interpretations and a copy of the Clean Water Act, the jury voted to acquit.

Arens says "dirt-on-dirt" wetlands prosecutions such as the Moseley case are easy to beat, in part because they hinge solely on regulatory interpretations. A bigger challenge is keeping clients who indeed have violated environmental statutes out of prison. "The biggest epidemic [in prosecutions] now is settlement," he says. Prosecutors "will scare [defendants] to death—$25,000 a day fine and five years in prison—and you did [violate] the law. Sure [you'll] make a deal. That's what's wrong with the system."

Still, the Justice Department finds it harder to put people away for environmental offenses than for more traditional crimes. An internal DOJ memo shows that, from fiscal year 1983 (when the Environmental Crimes Unit began) through fiscal year 1991, the federal government had either negotiated guilty pleas or had won convictions at trial in 78 percent of its environmental cases. This ranks considerably lower than the 90-percent success rate the department considers "acceptable" for its criminal prosecutions. The conviction numbers suggest that prosecutors are bringing environmental charges even when the evidence is somewhat slim.

But some liberals in Congress argue that the federal government has severely *underprosecuted* environmental crimes. Early last year, a House oversight committee chaired by Rep. John Dingell (D-Mich.) launched an investigation of the Justice Department's environmental prosecution record. And at the behest of Rep. Charles Schumer (D-N.Y.), chairman of the House Subcommittee on Crime and Criminal Justice, George Washington University law professor Jonathan Turley issued a preliminary study on DOJ's environmental prosecutions last October.

This 160-page rhetorical letter bomb claimed to find, among other things, "a marked reluctance within the [Environmental Crimes Section at DOJ] to prosecute environmental crimes to the same degree as more conventional crimes"; "chronic shortages in funding and support of criminal environmental investigations and prosecutions"; and "possible political influence in both individual cases and general policies within the Environmental Crimes Section." While the number of environmental indictments jumped from 40 in 1983 to 125 in 1991, the report continues, "this remains a low number of prosecutions, given the 94 U.S. Attorneys offices capable of being environmental prosecutions [sic]."

The report is packed with innuendo, using unnamed sources to criticize individual prosecutors and treating persons with an ax to grind as disinterested observers. For instance, the report discusses six cases in which Justice refused to pursue criminal charges against defendants. In one pesticide case the report cites, Turley's principal sources are suing the manufacturer for wrongful death.

The study claims its "investigators" (who were Turley's law students) "were instructed to...interview every critical party in federal prosecutions." Except, apparently, officials at DOJ. Last December, DOJ spokeswoman Melissa Burns told me the department first learned of the study the day it was released.

In a December 1992 interview, Neil Cartusciello, who has run the Environmental Crimes Section since May 1991, was somewhat amused by the allegation that he's soft on crime. As an assistant U.S. attorney in New York, he prosecuted the Princeton/Newport securities fraud case. His aggressive use of pretrial asset forfeiture and racketeering charges drew the wrath of, among others, *The Wall Street Journal*'s editorial-page editors. "I believe the term they used to describe me was *overzealous*," he said.

Cartusciello is obviously miffed by the Turley report's charges. For instance, the report disapprovingly notes that the "number of indictments against corporate officers is clearly reduced by the enhanced use of plea agreements at the ECS." What's the problem with that? Cartusciello asks. There are plenty of times when a plea bargain is the best the government can do.

Someone accused of an environmental crime is supposed to receive the same constitutional protections as any other criminal suspect. The government "cannot bring a prosecution," says Cartusciello, "when there's not proof beyond a reasonable doubt that someone has committed a crime." Given the weaker burden of proof in civil suits, the government will often go that route. "Environmental laws have a full range of sanctions," including fines or other administrative penalties, he says. "If every case of pollution were [treated as] a criminal case there's hardly any need for these other remedies."

During last fall's presidential campaign, then-Sen. Al Gore said Turley's report proved that "George Bush and Dan Quayle are protecting their rich friends who own the smokestacks and pollute our environment." Bill Clinton and Al Gore may have won the election, but Schumer and Dingell still aren't satisfied.

In May, Attorney General Janet Reno announced an $11.1-million civil fine against Louisiana Pacific Co. The company had filed inaccurate emissions reports that violated the Clean Air Act. In addition to the fine, the company agreed to install $70 million in pollution equipment at plants in nine states.

Despite the enormous fine, environmental activists grumbled because none of Louisiana Pacific's corporate officers went to jail. In a *New York Times* interview, Turley said, "To allow Louisiana Pacific to simply internalize [the fine] and not face criminal liability sends a message to industry that environmental violations remain simply the cost of doing business."

Soon after the fine was announced, Dingell's subcommittee voted in secret to subpoena environmental prosecutors and compel testimony from them about any political pressures they may have received. And this spring, Congress authorized the use of subpoenas to compel the testimony of line prosecutors. Setting what many current and former prosecutors regard as a dangerous precedent, Reno will let Dingell's crew interview as many as 15 people in the Environmental Crimes Section on their handling of 20 different cases. This step opens the supposedly independent Department of Justice to political micromanagement and violates the separation of powers between Congress and the executive branch.

Speaking at the Heritage Foundation in August, Carter administration Attorney General Benjamin Civiletti roundly condemned the action. He cited a hypothetical case in which "an individual is targeted for investigation into alleged violations of federal criminal law." The potential defendant believes he is innocent and tries to persuade the prosecutor not to seek an indictment.

"Now imagine," Civiletti continued, "that our hapless individual, to be heard by the prosecutor, has to shout over the loud protestations of members of Congress urging indictment of this very individual; or that members of Congress are standing ready to chastise the prosecutor if no indictment is brought. To imagine such a scenario is to understand why congressional involvement in prosecutorial decisions can be perilous to civil liberty." But, as the escalation of the drug war has shown, civil liberties take a back seat to political symbolism once a new type of vice crime captures the public imagination.

Environmental lawyers have benefited personally from the rapid expansion of civil and criminal penalties—two-thirds of the companies surveyed by *National Law Journal* had hired law firms specifically to handle environmental issues in the last year. But many corporate lawyers are frustrated. Said one survey respondent: "Stop treating us all like thieves in the night. We are trying to do the right thing—it may take us longer than some would like, but we will get there. Self-appointed protectors of the public welfare have never tried to run a billion-dollar facility with hundreds of employees, to make a quality product at a decent profit while contending with environmental rules (and the thousands of other rules and regulations that OSHA or IRS or the state also think are important)."

Already, the prospect of a jail sentence may discourage companies from reporting accidents that could be cleaned up before they cause harm. Under civil law, when an environmental accident occurs, a corporation can reduce its liability by reporting the accident and fully disclosing what substances were released. Businesses train their environmental compliance officers and attorneys to cooperate with government officials.

But a cooperative officer may be cutting his own throat. Donald Hensel, head of environmental compliance at the American Newspaper Publishers Association, told attendees at ANPA's 1991 convention, "Government regulators may not be interested in working with the industry to achieve compliance. They may use a jail sentence as a mechanism to enforce compliance."

"The primary goal of any criminal enforcement is to identify, prosecute, convict, and, ultimately, send some responsible official to jail," reports a *Legal Times* environmental supplement. When criminal penalties are possible, it continues, "an unduly cooperative approach may sacrifice the legal rights of the company and its employees."

Many corporate environmental lawyers even caution that internal company audits to track environmental compliance can turn into smoking guns in court if they identify problem areas that managers need to correct. "Companies are in effect being asked to plead guilty before being charged," said one respondent to the *National Law Journal* survey. A third of the lawyers sur-

RANDOLPH CLERIHUE

In a Heritage Foundation speech, former Attorney General Benjamin Civiletti condemned congressional interference with environmental prosecutions.

veyed said they feared internal audits might be used in prosecuting their companies.

Although most corporate attorneys take environmental laws as given, the crusade against environmental vice has begun to produce a backlash. Within the legal profession, at least, many people have begun to question whether criminal sanctions are appropriate for most environmental offenses.

Free-market public-interest law firms, such as the Pacific Legal Foundation and Washington Legal Foundation, are pushing to return environmental offenses to the traditional realms of administrative, civil, and criminal law. They have also taken up the cause of individuals accused of violating wetlands laws by moving dirt on their own property.

But challenges aren't limited to free-market advocates. The Dingell inquiry, by infringing on the professional independence of federal prosecutors, has shocked even attorneys such as former Attorney General Civiletti who find nothing wrong, in theory, with wide-ranging environmental prosecutions.

The very mainstream *California Lawyer* magazine recently featured a special section on environmental law with lead articles titled "The Truth: 'There Are No Environmental Crimes'," "Enforcement Laws Tilt in Favor of Prosecutors," and "Faulty 'Priority' Prosecutions: Federal Statutes Treat Mere Negligence as Crime." Wrote David P. Bancroft, a partner with Sideman & Bancroft in San Francisco, "When the criminalization of negligence is coupled with the criminal law doctrines of vicarious liability [roping in "responsible corporate officers" who knew nothing about the alleged crime], the results can be truly draconian."

For the moment, however, the trend is toward an ever-escalating war on environmental vice. The number of environmental prosecutions in the Clinton administration is expected to soar—after all, the feds have to keep all those new investigators busy. "Name a law-enforcement agency that's ever put itself out of business," says former Environmental Crimes Section head Starr. Clinton may even decide that 250 criminal investigators at EPA are not enough.

And next year, the U.S. Sentencing Commission will hand down a new set of environmental guidelines. Among the commission's advisers: Jonathan Turley, who says the current corporate sentences for environmental crimes aren't tough enough. "Environmental criminal penalties punish individuals and corporations by correctly labeling them as criminals," Turley wrote recently in *The Wall Street Journal*. "Nothing serves to concentrate the business mind more than a potential prison stint, even a brief one."

Meanwhile, Rep. Schumer plans to reintroduce his own environmental crimes bill during this session of Congress. It would increase the penalties for violating five environmental statutes to fines as high as $1 million and prison terms as long as 15 years. Schumer's bill would also permit the feds to award bounties of as much as $10,000 to citizens who turn in violators. And it would prohibit federal agencies from contracting with convicted companies. So, for example, a pharmaceutical company could lose the right to sell medicine at government hospitals.

The bill would also require courts to appoint independent "experts" to audit convicted companies. These experts, who could not be company employees or have any connection with the firm, would file reports with the courts listing what the company did wrong and recommend specific changes in manufacturing or disposal processes to fix the problem. The company couldn't challenge the audit or its recommendations, even if the expert knew nothing about what the company did or how it makes its products.

Crusaders such as Turley, Schumer, and Dingell wrap themselves in the mantle of "law and order." They say they are simply seeking to prosecute criminals, to put bad guys behind bars. Countering this claim, challenging this latest vice sweep, therefore requires more than a piecemeal, case-by-case defense of particular individuals and companies. It requires a public reexamination of the purposes of both environmental statutes and criminal law—and a willingness to make distinctions environmentalists want to blur. It requires questioning the notion that matters of taste should be turned into felonies.

"The purpose of criminal sanctions is to protect persons and their property," says Roger Marzulla, who oversaw environmental prosecutions as an assistant attorney general in the Reagan administration. "With the environment, we're protecting neither." Instead, "anything that is an affront to trees, rocks, and mountains can be considered a crime."

Traditional criminal and civil codes can deal with environmental threats to persons and property, such as toxic spills. That's just what the law did before the recent spate of environmental prosecutions. Nor does traditional law require us to ignore unrealized threats. Legal scholar Peter Huber of the Manhattan Institute notes that a person who intentionally poisons a water supply but is captured by law-enforcement officials before he kills anyone can still be arrested for attempted murder. The entire body of law dealing with "inchoate" (incomplete) offenses has provisions to cover attempted murder, conspiracy, and other crimes that are planned but not consummated.

The traditional criminal code treats actions that cause different amounts of harm in different ways. That's why the prison sentence for simple assault is lower than that for murder. Applying the same approach to environmental crimes means basing penalties on measurable damage, not on arbitrary dangers concocted by publicity-hungry prosecutors, legislators, and green activists. As Huber says, "There's a difference between dumping a barrel of PCBs in the river and stuffing a kid in a barrel of PCBs."

Unless you "anchor the law to real events" and genuine risks, he argues, there's a real danger of setting completely arbitrary penalties. Predicting future dangers, such as the latent effects of exposure to microscopic levels of chemicals, he says, is often "worse than guesswork. It's more like witch hunting." And—as Charles Donahoo, Wayne Hage, Todd Ross Shumway, Rich Savwoir, Harvey Van Fossan, Bill Ellen, Robert Wells, Junior Goodner, and James A. and Mary Ann Moseley, among many others, can testify—witch hunts have a way of finding witches, regardless of guilt. ■

Rick Henderson is Washington editor of REASON.

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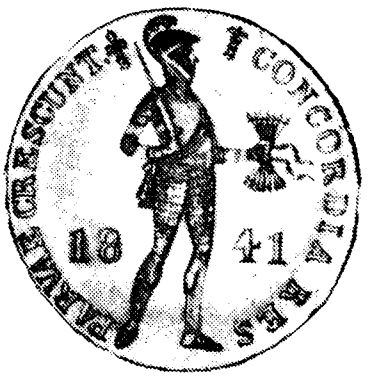
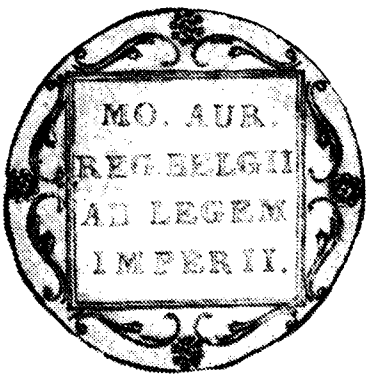
Dutch Gold Ducats





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The Netherlands Ducats that we offer have some very special qualities:

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The obverse features the erect figure of a Knight in full armor holding his sword aloft in his right hand and a bundle of arrows in his left hand. The Utrecht mint is indicated by its mintmark, a tiny torch. (The photo above is enlarged to show detail; actual diameter is 2.3 mm, a little smaller than a nickel.)

The reverse features a tablet with the Latin inscription, "MO. AUR. REG. BELGII Ad LEGEM IMMPERII," which means "gold money of the kingdom of the Belgians and all its realm."

The coins circulated widely, both as a medium of exchange among banks and as circulating coins in the Netherlands East Indies. Because of their wide popularity and acceptance, the ancient design was left unchanged into the 20th century.

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HENRY PAYNE

Why Johnny Can't Teach

by Jonathan Marshall

Without knowing what works in the classroom, American educators have become fad followers.

It's a giant industry, one that most Americans consider vital to their country's future competitiveness. Yet it spends less than 1 percent of its $375-billion annual gross revenue on research and development—and much of that is squandered by reliance on shoddy, unscientific methods. No wonder this industry is deeply troubled and in need of fundamental reform.

Public education—the industry in question—still uses much the same methods it did a century ago. One reason is the failure of educators to learn better ways of doing things. Bad research, underfunded research, and lack of official interest in good research have all crippled the ability of this industry to show improved results over time.

In a rare public acknowledgment of the research gap in education, the state of California's nonpartisan legislative analyst earlier this year declared that because of "severe methodological problems" afflicting nearly all evaluations of state-sponsored instructional programs, "educators simply do not know how well most programs address the problem for which they were created."

Last year the prestigious National Research Council of the National Academy of Sciences issued a scathing report condemning the field's penchant for "methodologically weak research, trivial studies, an infatuation with jargon, and a tendency toward fads." Without "high-quality and credible evaluations," it warned, "school districts will never be able to choose wisely among available innovations." And even when scientifically valid research is available, the report added, teachers, administrators, policy makers, and parents often ignore it.

No other industry would last long with such a haphazard approach to self-improvement. But in education, notes Diane Ravitch, a visiting fellow at the Brookings Institution and former assistant secretary of education for research, "there are no consequences for failure. It is a public monopoly like the Post Office. Whether you are good or bad, it will be funded. There is no bottom line."

Flying blind without good research guidance has produced many an educational crash, charges Donald Orlich, a researcher at Washington State University in Pullman, Washington. "This nation has wasted billions of dollars on poorly conceived but politically popular reform movements that have sapped the energies of school people," he says.

Billions of dollars more stand to be wasted unless things change. As Albert Shanker, president of the American Federation of Teachers, warned in 1988, "Without good research, we will continue on an endless cycle of mistakes and the loss of successful insights and

discoveries. Without good research, there will continue to be an endless invention of mousetraps, the same rehashing of controversies, and, in the end, the same faltering school system."

Robert Slavin, who runs a distinguished educational research facility at Johns Hopkins University, has observed that the typical educational innovation starts with a burst of enthusiasm, followed by "widespread dissemination, subsequent disappointment, and eventual decline—the classic swing of the pendulum." He says education resembles a progressive science less than it does the fashion and design industries, which gyrate according to fads and changing tastes. Gullible principals, school boards, and even state legislatures too often jump on the latest educational bandwagons, led by charismatic proselytizers who promote their programs with unsupported or anecdotal claims.

The "whole-language movement," the latest educational fad, assumes children will learn to read naturally when exposed to books. "It is not only not validated by any research whatsoever, but carries with it a philosophy opposed to evaluation," warns one researcher. "It may or may not be a good idea, but the extraordinary diffusion of this method from coast to coast without a shred of evidence is terrifying."

Slavin cites as one example the highly popular Instructional Theory into Practice, or Madeline Hunter model, which emphasizes the need for clear objectives, careful control of classroom time, and frequent assessment of student understanding—all sensible, but hardly revolutionary, steps. The technique did not receive a large-scale evaluation until 19 years after it started sweeping the nation. The study, based in South Carolina, found no significant improvement in performance by students of teachers trained in the model. Studies in New Jersey and in Napa, California, produced the same result. "You could get the same effect by throwing a pizza party," says Orlich, another critic. Yet the model continues to enjoy favor in many states.

Another example is the "open classroom," which was all the rage two decades ago. Schools were built (or redesigned) without walls, and students moved flexibly within classes between "learning stations," supposedly guided in part by their natural curiosity and sense of direction. "This was the hottest thing of its time in the early 1970s," Slavin says, "but research found consistently it didn't have the effect claimed."

The "whole-language movement" in reading is one of the latest fads to sweep the nation. Deriding the phonics method, the movement rests on an intuition that children will learn to read naturally when exposed to books and other reading materials. "It is not only not validated by any research whatsoever, but carries with it a philosophy opposed to evaluation," Slavin complains. "It may or may not be a good idea, but the extraordinary diffusion of this method from coast to coast without a shred of evidence is terrifying."

Besides cheating students, the cycle of high promises and dashed hopes often burns teachers out. When a really good program comes along, they may be reluctant to give it a try. "They have learned that the present innovation will be gone in a year," notes Thomas Guskey, an educational researcher at the University of Kentucky. "In fact, it is not unusual to hear teachers refer to the staff development program topic of the moment as TYNT, for This Year's New Thing. And cynics know, of course, that TYNT is bound to be different from LYNT, which was Last Year's New Thing."

Jennifer Schindler, vice principal and teacher at El Vista Elementary School in Modesto, a city with large numbers of poor Hispanic and Asian immigrants in California's Central Valley, is all too familiar with this pattern. She remembers wearily how schools moved from a "touchy-feely, let's-talk-about-our-problems" approach in the 1960s, to open classrooms in the mid-'70s, to back-to-the-basics in the early '80s, and then, in step with the rest of the nation, to the whole-language movement.

"We did the whole-language approach for a couple of years and didn't see any results," Schindler says. "The whole-language people say you shouldn't put structure in teaching, but our kids don't have a lot of structure at home....They flounder and wonder what to do next."

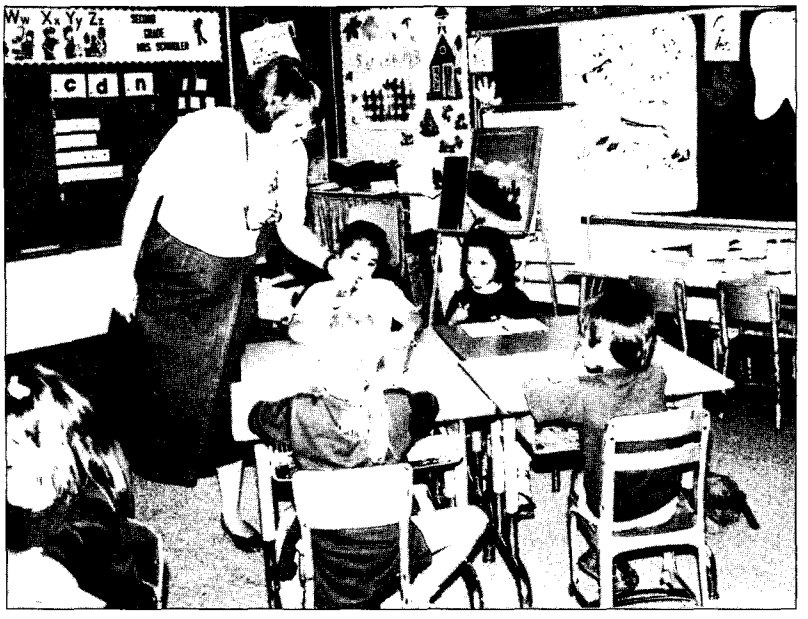
After years of floundering themselves, teachers at El Vista finally agreed to try a new approach developed by Slavin's team at Johns Hopkins for teaching reading and writing to grade-school children from disadvantaged backgrounds. Based on experimental research, the program, called "Success for All," combines several proven approaches, including "mastery learning," a method of using frequent assessments and individual tutoring to prevent slippage by slower students in the class, and "cooperative learning," which makes small groups responsible for individual mastery of subjects.

Teachers at the school get lots of flack from ideologues who teach the latest educational fads at local colleges, Schindler says, so "we have to defend ourselves against the trends." Fortunately, their results are defense enough. "Our program is probably not the answer to all the world's problems, but all of our children read, and our first-graders are writing really well. Teachers with long experience say they are seeing a big improvement." Jerry Fry, program director for the entire district, says "this is the first time in my career that I've been in something that prevents failure. It's magic. It takes work, but it works."

Slavin devised his program based on years of careful evaluation of teaching programs. A stickler for rigorous research design, he won plaudits from the National Research Council last year for using systematic methods "not un-

common in the natural sciences, but...rare in education research and development."

The best evaluations of teaching methods, Slavin argues, have much in common with the experimental design used by medical researchers in testing a new drug. Teachers and students are selected randomly for an "experimental group," which uses the new approach, and a "control group." Both groups are tested before and after implementation of the new method. Ideally, testing continues some years out to see whether any improvements stick or fade with time.



Teacher Jennifer Schindler uses the "Success for All" learning program, developed by Johns Hopkins University education researcher Robert Slavin, as she teaches her second-grade students to recognize new words with the letter "d" in them.

Howard Bloom, an economist at New York University, calls such experimental design "the most powerful existing methodology for measuring the impacts of social programs." Random assignment ensures that factors such as age, education, and race do not bias the results. Of even greater importance, he says, it ensures that experimental and control groups are "comparable in terms of unmeasured factors such as motivation, intelligence, and emotional stability. Therefore, any subsequent differences between outcomes for these groups can be attributed to differences in the treatments to which they were exposed."

Randomized tests are not a panacea. As in all evaluations, there must be some objective criteria of success and a sufficiently long testing period to give the program a real tryout. Political problems sometimes stand in the way. If a new program seems especially promising, says Ricky Takai, a senior Department of Education official, parents and teachers often resent being left behind in the control group, at least until administrators convince them that selection by lottery is fairer than any other method when experimental slots are limited. Another limitation is that the test may indicate only that a program works, but not which of its components count the most or why. Close field observation of actual classrooms is needed to supplement and interpret the results.

Slavin says much educational research does not even come close to these standards. Evaluations are often conducted by the program developer, who tests under optimal conditions by selecting the most enthusiastic teachers and best-motivated students for the program. No comparison groups are used, much less randomly selected control groups; instead classes are simply tested at the beginning and end of the year, and gains in grades or test scores are attributed to the program. Research assumptions and limitations are often poorly documented or ignored altogether. And results are not replicated in other settings before the developers begin beating the drum for the latest fad.

The National Diffusion Network, a government-funded clearinghouse that informs states and local districts of promising new educational methods, seeks to weed out the worst of these research claims. Even so, "their standards are still very low," Slavin charges. "Few of the programs or reports [they endorse] had control groups. There are some 500 projects in the book that are listed as being effective; let me assure you there aren't 500 methods that really are effective."

If anything, interest in the use of scientific research methods in education is waning, not growing. Instead of investing in large-scale, long-term evaluations of classroom teaching methods, most research today favors impressionistic studies of individual classrooms and teachers. "You have an absurd movement to anecdotal, anthropological studies of classrooms," says Herbert Walberg, a renowned educational researcher at the Chicago campus of the University of Illinois. "In my view it's almost anti-science. But two-thirds of the members of the American Educational Research Association would disagree with me."

Funding is also scarce for really good field research. Most federal research money goes to regional research centers that disseminate information rather than oversee careful experiments.

And yet it is sheer folly not to invest the money to find out what works. The federal government pumps more than $6 billion a year into so-called Chapter I funds, which aid school districts with significant numbers of "disadvantaged" students. One of the chief ways local districts use the money is to reduce class sizes—just about the most expensive possible intervention given the cost of hiring extra teachers and building more facilities. Yet strong teacher lobbies with a stake in new hiring promote class-size reduction as the answer to America's educational needs. As Keith Geiger, president of the National Education Association, declared, "If we're serious about improving learning in America, there's no more important place to begin."

But does it work? For years nearly everyone had an opinion, but nobody really knew until recently because hardly any systematic tests had ever been done to answer the question. In-

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tuitively, it seems obvious that smaller classes should help, yet Japanese students manage to excel in mathematics despite class sizes in the low 40s.

In the mid-'80s, the Tennessee legislature decided it needed a definitive answer. With help from researchers in the state university system, it appropriated $12 million to carry out a bullet-proof test. (The actual research cost less than $1 million; the rest paid for smaller classes.) Known as Project STAR, the study took 7,500 students in grades K-3 and assigned them randomly to three types of classes: normal ones with 23 kids and a single teacher; normal-size classes that included a teacher's aide; and classes with only 15 children per teacher. Teachers were also assigned randomly to avoid bias. Careful, consistent testing tracked the children through these classes and into later years.

Even the best research on teaching methods often fails to decide the most critical issue facing school districts: cost-effectiveness. When funds are tight, schools cannot necessarily afford to opt for programs that offer the most performance gains for students. When it comes to picking from a menu of worthy options, school districts have little to go on.

The results of Project STAR were fascinating and instructive: Students who attended smaller classes made significant cognitive gains in all subjects, proving for the first time that smaller classes really do aid learning. (In contrast, teacher's aides did not help academic performance at all.) At the same time, however, the performance gains were modest—well below those achieved by several proven teaching methods, such as mastery learning and cooperative learning, that work well in normal-size classes.

As John Folger, professor emeritus at Vanderbilt University, concluded in a review of Project STAR, "the high cost of reducing class size across the board makes it unfeasible. There are other interventions which produce much larger improvements in student achievement for the same or lower costs than would be involved in a substantial reduction in class size." Folger cited Slavin's Success for All as a reading program that produces three to five times the gains of reducing class size.

Praise for the careful experimental design of Project STAR has been almost universal. Orlich calls it "the most significant educational research done in the U.S. during the past 25 years." Slavin, who calls it "an extraordinary experiment that makes most previous research on class size obsolete," notes the irony that "we are willing to spend massive sums on educational services of unknown effect but find it shocking to spend $12 million to find answers to questions at the top of people's list of what we need to know."

Such investments in high-quality research have time and again proven their ability to change the terms of social debates. In education, for example, few studies have been more influential than one of about 50 poor, black children who attended the Perry Preschool in Ypsilanti, Michigan, in the early '60s. Using a randomized design, the experiment showed that disadvantaged kids who attended a high-quality preschool achieved more later in school and in adulthood than similar kids who did not attend the preschool.

Experimental tests of social interventions have been even more common and influential in the area of job training and welfare-to-work programs, such as California's GAIN initiative and the national Job Training Partnership Act. Title II of the 1988 Family Support Act, which promotes job search and training programs for welfare recipients, passed with bipartisan support thanks to randomized, experimental studies of successful welfare-to-work programs conducted by the private, nonprofit Manpower Demonstration Research Corporation. "MDRC's studies really changed the tenor of the debate," says Erica Baum, former legislative aide to Sen. Daniel Moynihan, the New York Democrat who authored the bill. "Everybody accepted its data as gospel because it was the most rigorous social science to date and showed that some things did work."

Norton Grubb, an educational economist at the University of California, Berkeley, observes that millions of dollars of government and foundation dollars have supported randomized experiments in AFDC and job training without trickling down to education, a much larger field. "Education has had very little sophisticated research going on in the last 15 years," he says. "There is really an imbalance that we need to rectify."

California's legislative analyst agrees. In a recent report the office complained that "while the Legislature has spent millions of dollars on program evaluations in education, the state has little to show for these expenditures." As a "critical ingredient" of ensuring better evaluations, the report said, the state should "require use of randomly selected control groups. Almost no education programs use this evaluation design. Without the use of randomized control groups, it is very difficult to accurately measure the impact of services. This design also permits measurement of longterm impacts at a relatively low cost."

California's legislature seems to have gotten the message. Last year it authorized just such a study of a promising but unproven high-school program of "career academies" that aims to integrate academic and vocational education and keep potential dropouts in school. MDRC has been selected to run the study at school sites in California and several other states, using its expertise in random-assignment experiments. The organization has to raise its own funding, mostly from foundations.

But even the best research on teaching methods often fails to decide the most critical issue facing school districts: cost-effectiveness. When funds are tight, schools cannot necessar-

ily afford to opt for programs that offer the most performance gains. When it comes to picking from a menu of worthy options, districts have little to go on. "Most evaluations neglect to consider the costs of potential interventions," noted an important 1984 paper on the issue by Stanford University's Henry Levin, Gene Glass, and Gail Meister. "The result of these gaps in information is that there is little to guide policymakers or school districts in choosing among school reforms that will account for both the costs and effects of educational interventions."

Two second graders at El Vista Elementary School engage in "partner reading." In the activity, part of the "Success for All" program, students help each other practice reading by reading aloud to each other one page at a time.

Their nine-year-old study of the "Cost Effectiveness of Four Educational Interventions" appears to be the only one of its kind in the entire field, according to many researchers. Its results were eye-opening, although not definitive: "Peer tutoring" (tutoring of young children by older ones) was the most cost-effective approach to improving math and reading. Computer-aided instruction came next, followed by reduced class size and, at the very bottom, longer school days.

Why are the most promising research approaches so often ignored or abandoned, given the stakes? One fundamental reason is that offered by Ravitch, that the public-school monopoly is ultimately not accountable to consumers for performance. Sheltered from competition by the high cost of private schooling, protected from parental wrath by layers of bureaucracy, and answerable mainly to organized interest groups such as teacher and custodial unions, public schools simply have no systematic stake in perfecting themselves. On the contrary, they have a strong incentive to avoid evaluations that might help parents make informed choices, pinpoint flaws, and demand institutional changes.

Yet this is far from the only reason. Most teachers, public as well as private, would like to do better but don't know how. And many private schools are as backward as their public counterparts in teaching methods.

John Goodlad, who runs a research and development center at the University of Washington specializing in teacher education, notes that most teacher-education programs are simply too short to expose future practitioners to the latest research, much less to the methodological principles needed to evaluate research claims. "For the most part, teacher-education programs have been too short or limited to build research into them, unlike four-year medical programs." Although Goodlad is too polite to say so, many teacher trainees are among the least capable of college graduates and are thus less equipped to grapple with the intellectual challenges of scientific research. Teachers who emerge ignorant of research strategies may, years later, become administrators ignorant of what good research has to offer and which bad research to avoid.

Compounding the problem is the limited interest of many politicians, whose lives are divided into two-year chunks, in supporting long-term studies. They would rather cut ribbons and enact bold new programs than fund studies whose results may not show up during their terms in office. Their short time horizon renders much of the research they do fund worthless. Audrey Pendleton, who analyzes dropout prevention programs for the U.S. Department of Education, complains that most research grants last only three years and thus track students only through graduation—not long enough to find out whether the programs have any measurable effect on future earnings or job prospects.

Finally, educational research is inevitably crimped by the lack of any fundamental agreement on educational goals. Should schools be measured by student performance on standardized tests, by more subjective tests that aim to capture "critical thinking" skills, by their ability to turn young people into good citizens, or by how well they harmonize students of diverse ethnic and social backgrounds? The goals of education are a rapidly moving target. If members of the public cannot even agree on what constitutes a good school, researchers will be hard pressed to say what produces good teaching.

Yet taxpayers who spend nearly $400 billion a year on education deserve more hard answers to questions that have for decades sparked only ideological debates over educational reform. Surely they deserve more than one solitary, dated study on the relative cost-effectiveness of alternative teaching methods. If nothing else, they deserve some assurance that educators and policy makers are capable of learning. No one says finding and implementing better educational methods will be easy. But the nation's failure to make a more serious effort is surely a grave indictment of its commitment to quality education. ■

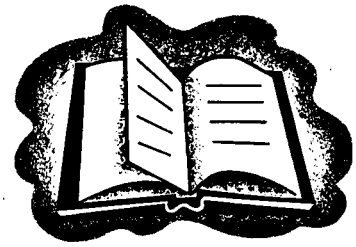
Contributing Editor Jonathan Marshall is economics editor of the San Francisco Chronicle.

EL VISTA ELEMENTARY SCHOOL

Know Thy Enemy

In past book issues, REASON has asked people to recommend edifying books—books that are significant because of the good they can help accomplish. But a well-rounded person should be familiar with pernicious books as well. So this year we asked each contributor to suggest a book published in the last 50 years that is significant because it has helped promote wrongheaded ideas with serious consequences. We suggested that the contributors might want to recommend antidote books as well. Here are their responses.

ARTHUR MATSON



David Kelley

In the 19th century, liberals worked to limit the role of government in economic matters, under the banner of free trade, laissez-faire, and the rights of property and contract. But around the turn of the century, in England and America, liberalism changed its course. As against the classical liberals, modern liberals wanted to expand government's power to regulate private economic activity and transfer wealth among its citizens.

Liberalism as a doctrine may be out of favor, but we still live in a liberal regime, with all the programs that liberals argued and lobbied for successfully: regulation of the economy as a whole through fiscal and monetary policy; regulation of individual sectors through regulatory agencies; welfare programs for the poor; and "social insurance" programs—unemployment benefits, Medicare, Social Security—for the entire population. Even conservative politicians now take these programs for granted.

It is therefore useful to know the arguments, the political philosophy, that made modern liberalism so successful. The best guide to this philosophy is L. T. Hobhouse's little book *Liberalism* (Oxford University Press, 1964). During his career, Hobhouse taught at Oxford and the University of London, was a journalist at the *Manchester Guardian* and other papers, and lectured widely in England and America. *Liberalism* is his attempt to justify the growth of the state by appealing to the individualist ideals of classical liberalism. Though the book was first published in 1911, it might have been written yesterday by the editorialists of *The New York Times*, if they took the time (and had the ability) to formulate the principles behind their positions.

Hobhouse thought that the ultimate good is the self-realization of the individual: "the development of will, of personality, of self control, or whatever we please to call that central harmonizing power which makes us capable of directing our own lives." Self-realization is the product of the individual's own voluntary initiative and choice; it cannot be compelled. But he claimed that the individual is not fully autonomous. His nature is shaped by society, and his exercise of choice depends on certain conditions that society must provide, including the provision of goods like education as well as the exercise of coercion by the state to regulate economic production and exchange.

Liberalism discusses the standard programs liberals sought, the standard rationales for them, and—most importantly—the redefinitions of classical-liberal concepts (freedom, rights, and equality, among others) that made the rationales seem plausible. The writings of later liberals, from John Dewey to John Rawls, contain little that one cannot find in Hobhouse, usually stated more clearly and economically.

As a counterpart to *Liberalism*, I would recommend the writings of Ayn Rand, especially her essay "What is Capitalism?" in *Capitalism: The Unknown Ideal*. Point for point—on human nature, on coercion and rights, on wealth and equality—Rand engages the issues on the same philosophical level as Hobhouse. Because she defends laissez-faire capitalism on moral grounds, she comes to grip with Hobhouse's arguments in a much fuller way than a purely economic critique could do.

David Kelley is executive director of the Institute for Objectivist Studies.

Peter W. Huber

Published in early 1949, George Orwell's *1984* is the most important piece of political satire of our times. To this day, Orwell's one truly great book impels us to launch giant antitrust suits against companies like AT&T and IBM. Big Brother. The Thought Police. Newspeak. Doublethink. These are all Orwell's words, Orwell's ideas. In fact Orwell has added his own name to the English language: *Orwellian*—the word is filled with chilling power.

The future that Orwell describes in *1984* is a future of an evil machine controlled by an evil ministry. Orwell calls the machine "the telescreen"—a sort of two-way television set. Telescreens are bolted to every wall, they hang on every street corner, and in every living room, even in the toilets. There is no way to shut them off. The telescreen connects to a huge Ministry that towers over central London. The machine is evil because it serves as the eye and ear of the Ministry. And the Ministry is powerful because it is master of the machine. Indeed, Big Brother, the omniscient, omnipotent leader of the state, has never been seen in the flesh. He is nothing more than a face and a voice on the telescreen. And every minute of the day and night, Big Brother is watching...*you.*

Technology has taught us otherwise. If you want to transmit large amounts of information, to and from large numbers of people, efficiently, flexibly, and reliably, you must use many switches, many points of interconnection. Unless you disperse the power, the system just won't perform. Thus, the centralized mainframe computer is being broken apart and spread out into hundreds of desktop machines. The large, central telephone exchange is being replaced by distributed switches with multiple levels of interconnection among them. We are building networks of networks—one for conventional telephone, several for cellular telephone, several for data transport, several for video

R. KENTON NELSON

transport, all interlinked and interconnected like the ribs and spines of a geodesic dome.

In a world of really advanced communication—the world now unfolding before us—people will be able to form communities, collaborations, alliances, almost at will, over any distance, from San Francisco to Singapore. The telescreen gives a man eyes and ears that can see and hear at any distance, and a tongue that can speak to anyone on the planet. The telescreen frees a man's senses, and his voice, and thus frees his intellect and his conscious mind. The telescreen gives man the power to hear, see, and speak, to be heard and seen, in the company of his own choosing, wherever it may be found. With the telescreen, men can create new cities whenever they need them, in the capacious light beams of the network and the airwaves of the stratosphere. For the first time in history, it is becoming possible to have brotherhood without Big Brother.

Orwell imagined the world of Stalin filled with Apple computers and concluded that it would be more horrible than any world ever seen before. Orwell was wrong. As Ithiel de Sola Pool would explain in his landmark 1983 book by that title, telescreens are, in fact, *Technologies of Freedom.*

Peter W. Huber is a senior fellow at the Manhattan Institute and a columnist at Forbes.

William A. Niskanen

My candidate for one of the most wrongheaded books of the last 50 years is the 1982 book by Ira Magaziner and Robert Reich, *Minding America's Businesses.* I chose this book not because the authors are evil or the book is awful but because the book promotes the profoundly pernicious view that the government can and should have a "rational" industrial policy to guide the allocation of labor and capital. Moreover, the authors are now in positions of substantial responsibility, Magaziner as the major architect of the Clinton health plan and Reich as secretary of labor, so there is reason for concern that they may have maintained this perspective.

As I mentioned, this book is wrongheaded but not awful. The authors were careful about the facts. The analysis was plausible to most people other than economists; the authors, for example, do not understand comparative advantage or the causes of inflation, but neither do most people. And the book provides a useful summary of our government's messy de facto industrial policy.

The conceptual case for industrial policy is that the returns to some investments are higher than the returns to the investor. The primary weakness of this case is that the government does not have either the information or the incentive to support these investments. The information necessary to identify a promising technology, product, or firm is decentralized and often contrary to the conventional wisdom. The characteristic incentives of government are to support old technologies, failing firms, and technological fads. Magaziner and Reich have a perception that is either naive or arrogant—that appointing the right people to high office is sufficient for a rational industrial policy. The Clinton administration promises to be an interesting if costly test of this perspective.

The most effective early responses to this book were an article by Charles Schultze in the Fall 1983 *Brookings Review* and Chapter 3 of the 1984 *Economic Report to the President.* More interesting, perhaps, the 1990 book by Robert Reich, *The Work of Nations,* makes the case that government's primary focus should be on improving the skills of the labor force, not on the allocation of investment.

One's ability to identify great heroes and villains is much enhanced by the telescope of time. My pantheon of heroes probably includes many of the same men and women that most REASON readers honor. And our lists of great villains probably also share such names as Rousseau, Marx, Nietzsche, and Freud. Proximity, in contrast, clouds the analytic senses. Greatness, for either good or ill, is difficult to discern among people one has met or seen on television. My tentative judgment is that Magaziner and Reich have done only little harm as authors but that they have the potential for great mischief as government officials.

William A. Niskanen is chairman of the Cato Institute.

Steven Hayward

For a while during the late 1960s and early '70s, it was a rhetorical fashion to say, "Any nation that can land a man on the moon can [fill in the blank]." My own contribution to this cliché was, "Any nation that can land a man on the moon can abolish the income tax." But mostly this nostrum was deployed by Sens. Humphrey and McGovern or the editorial writers of *The New York Times* in relation to poverty or some other intractable social problem.

Because Marxist-inspired class warfare has never resonated very well in American politics (as President Clinton found out to his surprise in the tax bill fight), establishing and enlarging the redistributionist state required a more nuanced justification rooted in the nation's middle-class "can-do" spirit, which was best exemplified in the moon-landing crusade. The breakthrough book that provided this rationale was Michael Harrington's *The Other America*, published in 1963. Together with J.K. Galbraith's *The Affluent Society*, Harrington's book supplied the intellectual basis for the Great Society's vast expansion of the welfare state beyond its previous New Deal borders. President Kennedy read *The Other America* shortly before his death and is said to have been moved by it to order his New Frontiersmen to begin drawing up policy blueprints based on the book.

Harrington contended that the number of Americans living in poverty was much larger than the usual statistics showed. But the most important part of his argument was a new conception of the nature of poverty. Harrington attempted to debunk the common view that poverty was chiefly the result of defects in character and initiative among poor people, arguing instead that

the poor were victims, trapped in a culture that was structurally sealed off from economic progress and expanding prosperity. A rising tide wouldn't lift boats with holes in their hulls.

Appealing to the American can-do spirit, Harrington argued that an institutional attack on poverty could help produce the moral regeneration necessary to end poverty. "There is only one institution in the society capable of acting to end poverty," Harrington concluded. "That is the Federal Government." The War on Poverty was declared.

The obvious antidote book is Charles Murray's *Losing Ground: American Social Policy, 1950–1980* (though one should not overlook the early challenge to the poverty warriors from Edward Banfield's 1969 book, *The Unheavenly City*). Murray copiously documents the perverse results of this misbegotten crusade so effectively that today's poverty warriors either accept or must take account of his arguments and evidence. For example, Mickey Kaus's recent tract, *The End of Equality,* which rehearses many of Harrington's old themes about the structural nature of poverty, contains several discussions of Murray but not a single reference to Harrington. And central to Kaus's book is the admission that big-spending "money liberalism" won't work.

The War on Poverty is destined to continue for a long while yet, but thanks to Murray and the growing recognition that social problems aren't engineering tasks to be tackled like moon landings, we can hope that perhaps it won't end up being a fruitless Hundred Years' War.

Contributing Editor Steven Hayward is research and editorial director for the Pacific Research Institute in San Francisco.

Gary S. Becker

In 1942 Joseph Schumpeter, the outstanding Austrian economist, published *Capitalism, Socialism, and Democracy*, a collection of loosely connected essays. The book is justifiably considered a classic. His analysis of political democracy in terms of competition for political leadership was profound, and it influenced my approach and that of many others to this important subject. The book also contains many other insights.

But two major themes not only have turned out to be wrong but have had a pernicious influence on subsequent discussions of capitalism. The more important is Schumpeter's claim that capitalism was doomed—not by its failures, as in Marxian analysis, but by its successes. For according to Schumpeter, capitalism alienated intellectuals, who were unhappy because they are not important players in a decentralized free-market system. Moreover, intellectuals do not like the profit motive that drives this system. But Schumpeter greatly exaggerated the long-run influence of intellectuals on public policy.

Schumpeter joined his pessimism about the future of capitalism with unwarranted optimism about the economic potential of socialist and communist economic systems. That a great economist believed socialism might work successfully gave much reassurance to the many intellectuals attracted to socialism during the middle of this century.

He apparently believed that weak individual incentives under socialism would be compensated for by stronger group incentives: "The socialist order presumably will command that moral allegiance which is being increasingly refused to capitalism"; "there might be more self-discipline and more group discipline in socialist society, hence less need for authoritarian discipline than there is in a society of fettered capitalism"; "the vested interest in social unrest may be expected to disappear in part"; and "*socialism might be the only means of restoring social discipline*" (italics in original). He even claimed that "intellectuals as a group will no longer be hostile" and that trade unions will develop "into exponents of the social interest and into tools of discipline and performance, acquiring an attitude so completely different from that which is associated with trade unions in capitalist countries." These comments on socialism now seem quaint and naive, although, in Schumpeter's defense, he wrote before most of the evidence about socialism and communism was readily available.

Fortunately, Schumpeter's forecast of capitalism's future was dead wrong. Capitalism has especially thrived in the 1980s and '90s because public opinion has been far more impressed by the success of the Asian Tigers and other free-market economies, and the economic failure of socialist and communist countries, than by theories about capitalism's performance, including Schumpeter's sophisticated form of negativism.

Capitalism, Socialism, and Democracy was both a great book and a dangerous one. The danger came from the support his subtle but flawed analysis of the future of capitalism and socialism gave to intellectuals who did not need further reasons to dislike a decentralized, free-market, profit-oriented system.

Gary S. Becker, a winner of the Nobel Memorial Prize in Economic Science, is University Professor of Economics and Sociology at the University of Chicago.

Cathy Young

No book since *The Feminine Mystique* has had a greater impact on contemporary American feminism than Carol Gilligan's *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, 1982). A Harvard psychology professor, Gilligan challenges the "masculine bias" of theories that stress the development of an autonomous self as a prerequisite to mature intimacy.

Psychologists such as Erik Erickson, Gilligan complains, acknowledged that psychological development was different for the young woman (who must "attract the man...by whose status she will be defined" and for whom, therefore, self is defined through relationships) yet canonized the "male" process of individuation as the norm, disregarding values rooted in female ex-

perience. Through interviews with male and female children and young adults, she seeks to demonstrate that whereas men base their moral judgments on individual rights and abstract principles of right and wrong, women's moral understanding is "contextual," emphasizing human needs, empathy, and interdependence.

Many feminists were disturbed by Gilligan's apparent validation of sex stereotypes and traditional feminine virtues, yet she was championed by such prominent female commentators as Ellen Goodman, and *Ms.* put her on the cover as Woman of the Year in January 1984. Although, in contrast to legal scholar Catharine MacKinnon, Gilligan sees women as moral agents rather than passive victims of patriarchy, her brand of feminism opens the way to fresh charges of male oppression: Institutions are sexist not only if they exclude women but if they include them on "male" terms (expecting them to be as competitive and individualistic as men) and fail to incorporate "female" values. In the past decade, Gilligan's influence has surfaced in educational theories that call for more cooperative, intuitive learning styles attuned to "women's ways of knowing," in claims of women's distinct "caring" political agenda (more social programs), and in feminist jurisprudence, which derides individual rights and objective rules as male fixations.

To a degree, Gilligan corrects the oversights of earlier feminists who seemed to think that liberated women would just assume male roles and life would go on as if the traditionally female nurturing tasks weren't even needed. Yet she is especially irked by the view (espoused by some of the male psychologists she takes on) that "female" moral judgments are appropriate primarily in the personal sphere. While *In a Different Voice* steers clear of explicit politics, Gilligan's assertion that "male" ethics are based on the obligation *not to hurt* others and "female" ethics on the obligation to *help* others ("a morality of rights and non-interference may appear frightening to women in its potential justification of indifference and unconcern") engenders a nagging suspicion that "female values" may be a code word for socialism.

Gilligan's methods and conclusions have been challenged by a number of social scientists and writers, including feminists Susan Faludi and Katha Pollitt. The most thoughtful critiques can be found in *A Fearful Freedom: Women's Flight From Equality*, by Wendy Kaminer (Addison-Wesley, 1990), which shows the dangers of constructing legal norms based on the presumption that women are more nurturing and "connected" than men, and *The Mismeasure of Woman,* by Carol Tavris (Simon & Schuster, 1992). Tavris argues that Gilligan tends to absolutize often small statistical differences between the sexes, minimizing the female desire for autonomy and the male desire for intimacy.

Indeed, reading *In a Different Voice*, one often feels that Gilligan is arbitrarily interpreting the subjects' statements to fit her theory of sex differences. Responding to the hypothetical dilemma of Heinz, whose dying wife needs a drug that he can't afford and for which the druggist won't reduce the price, a male subject says Heinz is justified in stealing the drug because "human life is worth more than money," while a female subject says he should steal the drug because his wife "is another human being who needs help." In Gilligan's view, the male response appeals to an abstract hierarchy of priorities and the female response to an actual person's needs; yet aren't both really saying the same thing?

Recent studies have offered at best slim support for Gilligan's findings, showing that male and female college students, at least, are much more alike than they are different in balancing intimacy and autonomy. In politics, Bill Clinton is far closer to Gilligan's "female" model than is Margaret Thatcher. Generally, Tavris's conclusion that both men and women sometimes act in "feminine" ways (when caring for a sick relative) and sometimes in "masculine" ways (when competing for a promotion) seems to be solidly grounded in common sense. Yet, at least in academic feminism, the Gilligan model—often framed in terms of much more absolute gender division that Gilligan herself proposed—reigns supreme.

In the 1950s, women with overly individualistic personal values were often stigmatized as masculine. In the '90s, women with overly individualistic political values are often stigmatized as "male-identified." Have we really come a long way?

Contributing Editor Cathy Young is a writer in Middletown, New Jersey.

Bruce N. Ames & Thomas Jukes

Rachel Carson's *Silent Spring* (1962) became the inspiration for the environmental movement. Its elegant prose expressed passionate outrage at the ravaging of beautiful, unspoiled nature by man. Its frightening message was that we are all being injured by deadly poisons (DDT and other pesticides) put out by a callous chemical industry. This message was snapped up by intellectuals, and the book sold over a million copies. Many organizations have sprung up to spread Carson's message.

Rachel Carson set the style for environmentalism. Exaggeration and omission of pertinent contradictory evidence are acceptable for the holy cause.

The book starts with a romanticized vision of a world in harmony, followed by a horror story of an "evil spell that settled on the community: mysterious maladies swept the flocks of chickens; the cattle and sheep sickened and died....Children...would be stricken and die within a few hours....The few birds seen anywhere were moribund...and could not fly....a white granular powder...had fallen like snow upon the roofs and the lawns, the fields and the streams."

The powder was DDT, which actually saved tens of millions of lives, more than any substance in history, with the possible exception of antibiotics. The benefits of DDT were omitted from the book. *Silent Spring* said the American robin was "on the verge of extinction," yet Roger Tory Peterson (the dean of American ornithologists) said it was the most numerous bird on

the continent. DDT was highly toxic to mosquitoes but of very low toxicity to honey bees and higher animals. In the Third World, DDT saved the lives of millions of children who otherwise would have been exposed to malaria and other insect-borne diseases.

DDT displaced the more toxic and persistent lead arsenate. DDT was the first of a series of synthetic agricultural chemicals that have advanced public health by increasing the supply and reducing the price of fruits and vegetables. People who eat few fruits and vegetables, compared to those who eat about four or five portions a day, have about double the cancer rate for most types of cancer and run an increased risk of heart disease and cataracts as well. Thus, pesticides lead to lower cancer rates and improved health. Life expectancy has steadily increased in our era of pesticides. Pesticide residues in food are trivial in terms of cancer causation or toxicity. There has never been any convincing evidence that DDT (or pesticide residues in food) has ever caused cancer in man or that DDT had a significant impact on the population of our eagles or other birds.

Carson's fundamental misconception was: "For the first time in the history of the world, every human being is now subjected to contact with dangerous chemicals, from the moment of conception until death." This is nonsense: Every chemical is dangerous if the concentration is too high. Moreover, 99.9 percent of the chemicals humans ingest are natural. For example, 99.99 percent of the pesticides humans eat are natural pesticides produced by plants to kill off predators. About half of all natural chemicals tested at high dose, including natural pesticides, cause cancer in rodents. People determined to rid the world of synthetic chemicals refuse to face these facts. Risk assessment methods build in huge safety factors for synthetic chemicals, while natural chemicals are ignored. Current policy diverts enormous resources from important to unimportant risks.

Bruce N. Ames is a professor of biochemistry and molecular biology and Thomas Jukes is a professor of biophysics at the University of California, Berkeley.

Fred L. Smith Jr.

Ralph Nader's *Unsafe At Any Speed: The Designed-in Dangers of the American Automobile*, a blistering attack on the Chevrolet Corvair and the whole American auto industry, was the first assault of the consumerist movement. Published in 1965, this book had an immediate impact on the American political scene. General Motors was immediately placed in the spotlight, and within a year Congress enacted the Motor Vehicle Safety Act. Spurred on by his victory, Nader redoubled his assaults against America's producers and innovators, pushing a spate of regulatory initiatives. Congress, in turn, passed the Wholesome Meat Act, the Comprehensive Occupational Health and Safety Act, the National Gas Pipeline Act, the Radiation Control for Health and Safety Act, and more. For the next three decades, American automobiles, as well as other consumer products, would increasingly be designed by politicians rather than corporate engineers.

The significance of Nader's book goes beyond its direct political ramifications. Nader's work profoundly changed the way risk and safety were viewed in the American polity. Regulators and consumer activists were immediately cast as noble crusaders who sought a safe, clean, healthy world—thwarted by those willing to place a price tag on a human life, to assign a dollar value to a clean environment. Health, safety, and environmental risks, Americans came to believe, could only be addressed by pervasive political controls. Laws mandating "safety" at any cost have accounted for much of the growth in government for the last three decades.

Aaron Wildavsky in *Searching for Safety* sought to reframe this debate—to reexamine the argument that the choice was one of safety vs. profits. A safer world, he noted, often reflects the adoption of "unsafe" products that are safer than the products they displace. Fire was—and remains—a highly risky technology, but a fireless world faces even greater risks. Society must create institutions that balance risks against risks—the risks of allowing a certain product or technology to be used versus the risks of banning that product.

Wildavsky pointed out that societies cannot anticipate all the possible risks that an uncertain world entails, and rather should strive to increase wealth and knowledge so as to become more resilient, more able to overcome dangers of whatever sort. Wealthier societies, Wildavsky also noted, are safer (and healthier and cleaner) societies. Political regulators aren't engaged in easy morality plays but rather complex risk-balancing tasks in which the risks reduced by their regulations must be contrasted with the direct and wealth-reduction risks stemming from their actions. This is a fact that Nader and his followers have yet to learn.

Unlike Nader's book, Wildavsky's writings have not yet led to massive changes in the political landscape, but his work provides the intellectual basis for current risk reform efforts. Sadly, Aaron died earlier this year at the age of 63. His *Searching for Safety* is one of the most important, and tragically under-read, books of the post-war period.

Fred L. Smith Jr. is the founder and president of the Competitive Enterprise Institute in Washington, D.C.

Thomas Szasz

My candidate is *The Crimes of Punishment,* by Karl Menninger (Viking, 1968). The gist of Menninger's message is illustrated by the following excerpt: "The word *justice* irritates scientists. No surgeon expects to be asked if an operation for cancer is just or not....Behavioral scientists regard it as equally absurd to invoke the question of justice in deciding what to do with a woman who cannot resist her propensity to

shoplift, or with a man who cannot repress an impulse to assault somebody." Heaping praise on the book, the reviewer for *The New York Times* wrote: "As Dr. Menninger proves so searingly, criminals are surely ill, not evil." The book made the *Times* best-seller list.

If crime is sickness and punishment is crime, then punishment too is a sickness. The self-contradictory character of Menninger's thesis did not diminish its appeal to the liberal-psychiatric mind set, determined to replace penal sanctions with involuntary psychiatric "treatments." Indifference to fundamental rights to liberty and property, rejection of personal responsibility, and a pervasive erosion of justice and order are just some of the obvious consequences of this wrongheaded view.

Actually, in *The Crime of Punishment* Menninger systematically articulated a set of ideas and policies that had long been integral to psychiatric doctrine, namely the proposition that crime is a mental illness that should be controlled by means of coercive psychiatric interventions ("hospitalization" and "treatment"), rather than penal sanctions. Menninger himself had advanced these ideas in his earlier writings.

I hope it does not violate the canons of modesty appropriate for this occasion to suggest that the best "antidotes" against *The Crime of Punishment* are my own writings, in which I defend the case for treating so-called mental patients as moral agents, entitled to liberty if they obey the law and deserving of punishment if they violate it. The books in which I present this view most fully are *Law, Liberty, and Psychiatry* (1963), *Ideology and Insanity* (1970), and *Insanity: The Idea and Its Consequences* (1987).

Contributing Editor Thomas Szasz is professor of psychiatry emeritus at the SUNY Health Science Center in Syracuse.

Robert Higgs

Like most graduate students in economics during the last 40 years, I spent many painful hours plowing through Paul Samuelson's *Foundations of Economic Analysis* (Harvard University Press, 1947). From that sacred text we novices learned how to prove many specific theorems. Far more important, we learned how neoclassical economics—"modern economic science"—was supposed to be done.

We built mathematically specified "models," sets of equations describing the relations of selected economic variables. Model in hand, we proved that it had a stable equilibrium, then characterized the relations of the variables in that blessed state. Altering the "data" or the "parameters" of the model, we ascertained how a new equilibrium differed from an initial one. In its advanced form this protocol rendered most older economists instantly obsolete, but for young math wizards like Samuelson it opened up the prospect of "new realms of aesthetic delight." Eventually most economists entered those realms. Playing increasingly clever mathematical tricks with the models constituted "scientific progress."

Samuelson fashioned his models, which set the standard, after 19th-century physics. Functions were assumed to be smooth and continuous. Economics was reduced to various types of the same calculus problem: finding a constrained extremum. The economist's job was to state the objective function and the constraints, then grind out the solutions. This required considerable mathematical ability and stomach for tedium but little imagination and no familiarity with economic reality.

By the 1960s, if not earlier, academic economists who quarreled with this way of doing the job were, as Roy Weintraub put it, "regarded by mainstream neoclassical economists as defenders of lost causes or as kooks, misguided critics, and anti-scientific oddballs." By aping 19th-century physicists, neoclassical economists convinced themselves and others that they were doing science, but the effort was basically misguided, not so much scientific as, in F. A. Hayek's term, "scientistic." Human beings, purposeful and creative, are not like atoms; nor is a market analogous to a physical or chemical system. In the view of Hayek and his teacher Ludwig von Mises, neoclassical economics is, in critical respects, pseudo-science.

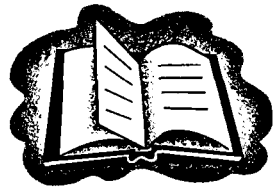
James Buchanan's *What Should Economists Do?* (Liberty Press, 1979) presents a telling critique of mainstream economics. "Its flaw lies in its conversion of individual choice behavior from a social-institutional context to a physical-computational one," he writes. Further, the obsession with equilibrium gives rise to "the most sophisticated fallacy in economic theory, the notion that because certain relationships hold in equilibrium the forced interferences designed to implement these relationships will, in fact, be desirable." Mainstream economists cannot move the earth with a mathematical lever, because they have no place to stand—no "given" information about property rights, consumer preferences, resource availabilities, and technical possibilities. What neoclassical economics takes as given is, in reality, revealed only by competitive processes. "Most modern economists," Buchanan aptly concludes, "are simply doing what other economists are doing while living off a form of dole that will simply not stand critical scrutiny."

Robert Higgs is a visiting professor of economics at Seattle University.

Donald N. McCloskey

The brothers Polanyi, Karl (1886–1964) and Michael (1891–1976), raised in the sunset of the Austro-Hungarian Empire, cover the range of reasonable responses to the 20th century. One response is to think of the market as the problem and the government—reinvented, of course—as the solution. Thus Karl's book published in 1944 about the rise and decline of modern capitalism, *The Great Transformation.*

People love it. Though hardly beach reading, it's well written, a piece of higher journalism. The theme is that the market was a recent invention, a mere novelty that has spoiled life. "The origins of the cataclysm lay in the utopian endeavor of economic



liberalism to set up a self-regulating market system. ...Leaving the fate of soil and people to the market would be tantamount to annihilating them." That theme is an old one, of course, echoed by greens and reds down the decades since 1848. But Polanyi put it well, giving three generations of English-speaking intellectuals a story to warrant the welfare state.

In other words, you have to give the book its intellectual due. Most fields of history have gone through a (Karl) Polanyi Period, in which the master's notion that the market is new and nasty has been applied afresh. Someone in African history or Mesopotamian history or American colonial history or (I am not making this up) Viking history runs across Polanyi's book, from which he discovers that he does not have to learn economics to sneer at markets. Eventually a reaction sets in, when the historians realize that the market is forever. The cycle takes about 20 years. New fields keep falling into it, 50 years on.

The book has never gone out of print. Professors still assign it. Intellectuals who want to learn about economics, but are afraid to ask, still pick it up and devour it. No book on the half century past has had more influence on social thinking.

The antidote? Any of the books by Karl's smarter brother, Michael. Michael was a famous chemist before turning to philosophy and public policy and therefore knew that proving something about the world is tough. He was not a consistent libertarian and even on occasion sounds like Congressman Kelly of Florida: "The free enterprise system is absolutely too important to be left to the voluntary action of the marketplace." But by the standard of the time, and certainly by the standard of the Polanyi family, he was a veritable Hayek.

Like his brother, he wrote well in his adopted language. Find his book *Personal Knowledge* (1958), an exploration of how, really, we know. Or, directly after sipping Karl's book, take a long drink from Michael's *The Logic of Liberty* (1951). In *The Logic* he argues, for example, "there exists no fundamental alternative to the system of money-making and profit-seeking" and "the social management of polycentric tasks requires a set of free institutions." Michael's response to the 20th century was to think of government as the problem and the market as the solution. Neither brother so much as mentions the other in his writings. It's no wonder. Karl was the poison and Michael the cure.

Donald N. McCloskey teaches economics and history at the University of Iowa. His latest book is Knowledge and Persuasion in Economics *(Cambridge University Press).*

William H. Mellor III

John Wesley Powell's exploration of the Grand Canyon in 1869 required mental and physical heroism of Randian proportions. The one-armed Civil War veteran led expeditions down the uncharted Green and Colorado rivers, overcoming torrential rapids, near starvation, and hostile Indians. In the process, he mapped thousands of miles of unexplored territory and gained dramatic insights into the challenges confronting the Western United States, challenges that remain today. Sadly, one of the best American writers of this century, Wallace Stegner, uses Powell's exploits as the foil to showcase his radiant defense of Progressive Era policies as the way to meet these challenges.

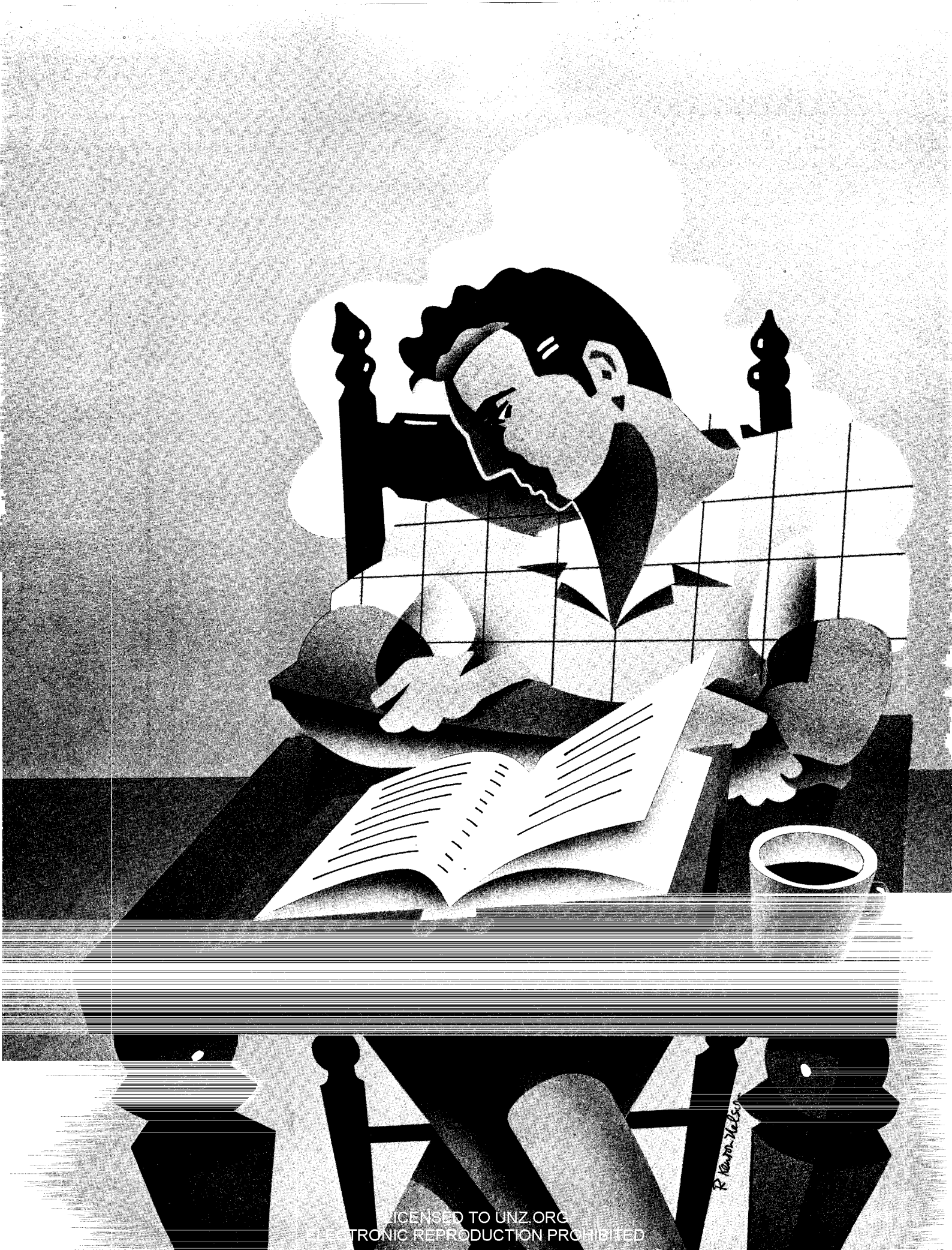
The first half of *Beyond the Hundredth Meridian: John Wesley Powell and the Second Opening of the West* (Penguin, 1954) is devoted to the gripping account of Powell's two trips through the beautiful canyon country. Stegner chronicles the action and natural grandeur to potent effect. The excitement builds as one appreciates how the explorers confront disaster and death countless times. Yet Powell, with his quiet resolution to advance scientific understanding of the West, never wavers in the face of staggering adversity.

As a result, one begins the second half of the book with great admiration for Powell and his vision of the West. Stegner carefully plays on this to draw the reader into sympathetic agreement with Powell as he turns his vast energy into forming one of our first Progressive Era bureaucracies, the U.S. Geological Survey. Powell envisioned an agency run by well-informed, scientifically trained elites who would ensure that the fragile ecology of the West would be managed to provide the greatest public good for his and future generations. The USGS served as the model for many later government agencies and the training ground for countless bureaucrats who staffed these new agencies. Powell, "both the bureaucrat and the idealist knew that private interests, whether they dealt in cattle or sheep, oil, mineral, coal, timber, water, or land itself, could not be trusted or expected to take care of the land or conserve its resources for the use of future generations. They could be trusted or expected to protect neither the monetary nor the nonmonetary values of the land."

This book should be read by anyone concerned with liberty or the American West. Stegner writes with authority and sensitivity about real problems that to this day plague the West: water allocation, political control over resources that leads to exploitation or misuse, and the myths and realities of economic existence in this arid region. Though the book was written in 1954, it offers a persuasive case for why Powell's vision should still be pursued. Stegner subtly validates the basic premises of enlightened rule by scientific experts, premises all too popular in Washington today.

This book is an excellent example of how the case for activist government can be successfully advanced using romance, history, adventure, and human interest. Until classical liberals are able to bring similar forces to bear in support of our arguments, we will lose more often than we will win. With respect to the West, a good start has been made in *Free Market Environmentalism,* by Terry Anderson and Don Leal, and *Visions upon the Land,* by Karl Hess Jr. But the ultimate refutation of Stegner is yet to be written. ■

William H. Mellor III is president and general counsel of the Institute for Justice in Washington, D.C.



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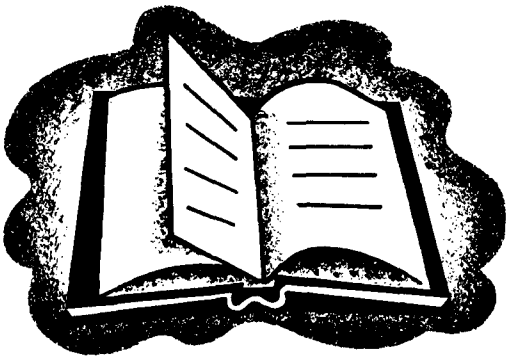

Sense and Sensibilities

Knowing right from wrong

By Loren E. Lomasky

The Moral Sense, by James Q. Wilson, New York: Macmillan, 313 pages, $22.95

Though perhaps not always presenting the loveliest visage nor the most edifying, the image that perpetually fascinates is the one that greets us when we gaze into the mirror. Both that which individuates oneself from other human beings and that by virtue of which we are alike captures and retains our attention as few other things can. Whether as eavesdroppers, voyeurs, Joyce Brothers groupies, or occasional readers of *People* magazine, nearly all of us offer implicit assent to Pope's dictum that "the proper study of mankind is man."

Perhaps never before in the history of the sport of people watching, though, have amateurs and professionals played the game so differently. The amateur version is laced through and through with moral characterizations. We view both intimate acquaintances and distant celebrities through a prism of virtues and vices. "She's never had a thought in her life for anyone but herself," or "That man simply can't be trusted," we say—and thereby not only describe but evaluate.

The marriage of a royal couple breaks down, or one Balkan people with unpronounceable names sets about slaughtering its equally unpronounceable neighbors, and we bestir ourselves not only to get the facts about who may have done what to whom and why, but then also to sympathize with one party and blame the other. Even when these doings have no perceptible effect on our own welfare, we do not sit on the sidelines as dispassionate observers. Instead we react emotionally to other people's displays of loyalty, treachery, steadfastness, compassion, bravery, duplicity, or whatever—and in our more introspective moments we are cheered or dismayed to view such qualities in ourselves.

But this sort of folk moral psychologizing has increasingly been called into question during the past couple centuries by scholars of human behavior. Economists look at people buying and selling, working and investing, and see various clones of a one-dimensional fellow named *Homo economicus* who, with single-minded determination, rationally acts to advance his own narrowly materialistic self-interest. He is, in the parlance of the profession, a "utility maximizer," and the utility that moves him is uniquely his own.

Nor does *Homo economicus* confine himself to the market. The work of path-breaking recent Nobel Prize winners such as James Buchanan and Gary Becker shows him equally at home while running for political office, dressing according to the latest fashion trends, marrying and raising children. Evolutionary biologists tell a complementary story. We are the descendants of generations that won a share of the survival game through assiduously enhancing their fitness potential. Those disposed to sacrifice their own prospects for the sake of their fellows returned their bones and chromosomes to the primeval ooze whence they came, while more consistently "selfish genes" left progeny that eventually generated you and me.

R. KENTON NELSON

If economics and biology maintain that competition in markets and mating crowds morality out of our nature, behavioral psychology and anthropology assume a yet more radical stance in denying that there is, in any interesting sense, such a thing as human nature. According to B.F. Skinner, we come into existence as blank tablets waiting to be written on by environmental influences. Whether these conditioning factors are deliberately engineered or thoroughly adventitious, they determine all our behavior. Separating an Albert Schweitzer and a Hermann Goering are only the vagaries of their reinforcement schedules.

For anthropologists such as Clifford Geertz, "there is no such thing as a human nature independent of culture." That which fascinates or repels, inspires or sickens us is rendered such through the imperatives of our cultural inheritance. It could have been radically different—and, as field anthropologists report, elsewhere it is. Values are, without exception, culturally relative; to suppose that one's own standards of rightness or decency are inherently more justifiable than their contraries is to be guilty of small-minded parochialism (and, most likely, to participate in the bigotry that has been endemic to the West).

In the one account, then, human beings do have a nature, but it exhibits calculating self-concern that excludes genuine sacrifice for others; in the other we are born without any fixed nature and take on whatever values society etches on us. These present significantly different images of what it is to be human, but they join in rejecting traditional (Christian and philosophical) conceptions of a universal human nature that is in some way fundamentally moral. That rejection of a morally imbued human nature finds further support in powerful intellectual currents such as a Freudianism that sees conscience as the product of harmful repression, the Nietzschean transmutation of all values, and a deconstructionism that subverts the claims of a putatively objective moral order.

In the one account, human beings have a nature, but it exhibits calculating self-concern that excludes sacrifice for others; in the other, we are born without any fixed nature and take on society's values. These present different images of what it is to be human, but they join in rejecting traditional conceptions of a universal human nature that is in some way fundamentally moral.

It is against these powerful forces of modernity that *The Moral Sense* jousts. "Virtue has acquired a bad name," proclaims Wilson in the book's first sentence, and the succeeding sentences aim at rectifying that blot. He forthrightly takes his stand with the amateur people watchers, at least to the extent that they have not themselves been corrupted by prevailing intellectual fashions. Ironically, though, the evidence on which he relies to combat the picture of human beings as self-absorbed social atoms is drawn largely from just those sciences that originally promoted that conception.

Wilson's revisionary reading of their results carries conviction. Is it really plausible to suppose that evolution has selected for uniform selfishness? We are a species in which dependency of the young is both profound and prolonged. If adults were not disposed at some very deep level to invest considerable resources in their survival, we would long ago have been written off as an evolutionary dead end.

Accordingly, the primary basis of sociality can be located in the bond between mothers and their children. Infants within a few hours of their birth observe and imitate. They are genetically programmed to elicit through their appearance and behavior affection and nurturance, in the first instance from their mothers but to a non-negligible extent also from fathers, other kin, and the wider community of adults. (Those smiling, chubby babies of the Michelin TV ads capture the attention and tire-buying dollars of consumers to whom they stand in no blood relation.) Infants imbibe at the breast not only nutrition but also their first lessons in cooperation. Countless millennia of genetic programming have prepared them to do so.

Aristotle, often cited by Wilson, noted some 23 centuries ago that the circumstances in which human beings find themselves are endlessly varied, and thus so too is the range of cultural adaptation found in human communities. But against the extreme cultural relativism of the sophists Aristotle contended that underlying this diversity are universal principles of human conduct, that there exist always and everywhere dispositions of character that enhance their possessors' ability to lead rich, full, genuinely human lives. These dispositions he identified as the moral virtues. They include temperance, courage, prudence, and justice.

Wilson, with surprisingly little modification of the Aristotelian original, argues against contemporary heirs of the sophists that virtually all of us are incipiently moral beings. Only psychopaths fail utterly to be moved by moral sentiments, and the lives they live are subhuman. Those of us not psychopathically disabled routinely exhibit certain emotions and moral propensities in our dealings with others. These include sympathy with the weal and woe of those with whom we interact, conceptions of fairness based on reciprocity and proportional contribution to desirable social outcomes, acknowledgment of a need for self-control in the face of various temptations, and a sense of duty that bids us to fulfill obligations even when doing so doesn't advance our own welfare.

That is not to say, of course, that when push comes to shove people are always directed by these moral impulses. We are

moral beings but not only moral beings; our nature incorporates alongside altruism generous measures of ambition, avarice, and aggression. We are, in a word, complex. Aristotle was well aware of this complexity, as was the 18th-century British theorist of the moral sense, Francis Hutcheson, and his students David Hume and Adam Smith. These latter three are explicitly adopted by Wilson (evidenced in his choice of title) as chief philosophical allies. Advanced contemporary thought labels as naive their theories of a human nature characterized by proclivities to moral behavior that may be overridden but never completely extirpated. Instead, the real naiveté is to suppose that a fellow as flat and featureless as *Homo economicus* could be a passable likeness of us in all our complexity.

The Moral Sense contributes significantly and with not a little bravery to the people-watching enterprise. Wilson ventures various hypotheses concerning the significance of ethnicity and, especially, gender that bump up against contemporary taboos of American university culture. ("We don't say 'mothering,' we say 'parenting'!") And though recognizably conservative in his views, he skirts the ideological cant of the right almost as successfully as he does the regnant pieties of the left.

Perhaps most notable is Wilson's achievement in presenting the findings of a half dozen social sciences in a manner that renders this mass of information not only readable but, in places, even gripping. I found especially intriguing his speculations concerning why in one corner of Europe and North America but nowhere else during the entire history of the world there happened to emerge in partial replacement of the morality of one's own group the conviction that there exist human rights that extend to all people everywhere. Without quite falling into reductionism, he identifies uniquely northern European patterns of matrimony and child rearing as the crucial preludes to enhanced respect for the individual and the ethical universalism that derives from it.

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Frankly, I found these more speculative excursions more stimulating than the chapters that advance the central thesis of a universal human moral nature. For truth be told, and despite the extravagant dust-jacket blurbs from a passel of distinguished intellectuals who should—and probably do—know better, Wilson is hardly the first major social thinker since Adam Smith to reflect on the moral springs of human activity. Although Wilson avails himself of the author's prerogative of inflating the menace of his opponents before eviscerating them, he graciously acknowledges the work of numerous other scholars who have drawn similar conclusions concerning moral anthropology.

I shall, therefore, in what follows take it as established that there is such a thing as human nature and that it is, in an important sense, moral. That is to grant Wilson much of that for which he argues—much but not all. For beyond maintaining that we are moral beings, he additionally affirms, even accords titular status to, the proposition that we are beings who possess a *moral sense*. In saying this he is explicitly following Hutcheson and, he thinks (mistakenly), Hume and Smith. But Wilson is neither consistent in this affirmation nor fully cognizant of the sort of claim that he thereby advances.

What is it to say that human beings possess a moral sense? It is, minimally, to advance an epistemological hypothesis. Our senses are conduits of information between us and the world. That daffodils are yellow, that sugar is sweeter than vinegar and lead heavier than water are data received through our senses. Senses are cognitive capacities, albeit neither infallible nor self-interpreting, that put the self in contact with that which is not self. They afford us knowledge.

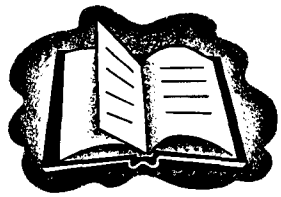
It is not only skeptics and nihilists who philosophize concerning the conditions of human knowledge. One who is quite confident that he knows that the sun is bigger than the moon, that three plus two equals five, or that the world contains many other minds besides one's own may nonetheless find it no small task to explain how it is that these facts are known to be facts. And, of course, sometimes what has long been believed to be solid knowledge is unexpectedly revealed to be fallacy or arrant superstition.

To a degree unprecedented in human history, the 16th and 17th centuries featured such episodes of so-called science displayed in its true colors as nescience. Not only geocentric astronomy and the dogmas of Catholic Christianity suffered turmoil and upset; also called into question was the Aristotelian conception of a hierarchically structured universe permeated with value. Old answers concerning the basis of our knowledge of good and evil failed to satisfy emerging standards of justified belief. In the wake of the collapse of the Aristotelian synthesis, philosophers had to rethink not so much the content of ordinary morality as its epistemic provenance.

The British since medieval times had been empiricist by temperament, one reason why they were quick to jump on the bandwagon of the new experimental sciences. So Hutcheson's moral theory managed to position itself as both thoroughly conservative and in keeping with contemporary scientific fashions. Bona fide knowledge, he conceded, came through the senses. So too

with moral knowledge. Our perceptions of good and bad are not some occult deliverance but rather the product of a special sense, the moral sense. All unimpaired human beings are endowed with a moral sense. Although, like the other senses, it is not immune from illusion and delusion, its existence explains how people come to possess moral knowledge and why, for the most part, we agree in our judgments of rightness and wrongness.

The fatal difficulty with Hutcheson's account is the disparity between senses like sight and smell on the one hand and the putative moral sense on the other hand. For the former we can identify discrete organs of sensation and trace out the mechanisms through which external stimuli issue in cognitive data. But the alleged organ of moral sensation and its operations are altogether mysterious. For this reason, Hume and Smith jettison Hutcheson's so-called moral sense in their reconstructions of morality. Wilson either is unaware of this disagreement or chooses to downplay its significance. But this is no minor pedant's quarrel; the implications strike deep.



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To see why that is so, consider the following analogy. Suppose someone intent to vindicate the existence of religious knowledge maintains that human beings have by nature a theistic sense. In fact, predecessors and contemporaries of Hutcheson advanced precisely that claim. Calvin held that man has a sense of the divine that, though severely damaged by Adam's fall, divulges to us the identity of our Maker. The 17th-century mathematician/philosopher René Descartes maintained similarly that there is in each of us an innate idea of God impressed on our minds like the mark a potter stamps on the vessels he makes. Thus the most certain and unmediated knowledge we have of any being beyond the self is our knowledge of God.

Note that these aren't merely pious affirmations of the existence of a God but also theories of how that existence is known. Importantly, they amount to considerably more than the claim that human beings are, by and large, religiously inclined. For there may be some common human trait that explains why we are prone to fancies of higher beings quite independent of the existence of such beings. (Feuerbach, Marx, and Freud each offered theories concerning the nature of that trait.) And it may be important that social scientists make themselves aware of this propensity so that they don't, to cite just one instance, find themselves thoroughly surprised by the recrudescence of religious fundamentalism during the final quarter of the 20th century.

That, though, is not to acknowledge the existence of a theistic sense. In particular, there is no such sense if there exists no external reality that stands as both stimulus and object of our religious apprehensions. And the existence of such an object is precisely what atheists deny, even as they may acknowledge the ubiquity of religious feeling among human beings. Similarly, a moral skeptic can easily concede that Wilson has demonstrated the ubiquity of moral feelings but deny that this constitutes any vindication of the claims of ordinary morality.

Unlike Wilson, Hume and Smith were sharply aware of the gulf between acknowledging that human beings are moved by various *moral sentiments* and ascribing to them a *moral sense*. Thus neither Hume nor Smith commits himself to the existence of a world of moral facts to which we have unmediated cognitive access. Instead each attempts to explain how we are able to formulate interpersonally justifiable moral judgments in the absence of a faculty of moral sense. It is by no means obvious how this is at all possible. The theories they offer are subtle, beautiful, and importantly different one from the other. But for Wilson, it might just as well have been one man writing under the names "Hutcheson," "Hume," and "Smith." Wilson's admirers do him no favor in placing *The Moral Sense* in that august company.

Wilson's contribution is more modest, but it is nonetheless real. Against enthusiasts for the programmatic remaking of human beings and the societies in which they live, Wilson provides a useful reminder that currents of human moral psychology run deep and are not easily diverted from their natural course. Successful sociality, he tells us, is not a given—who could have observed last year's Los Angeles or this year's Bosnia and think otherwise?—but rather is predicated on the tricky and easily fumbled task of actualizing the human potential for self-control and fairness to others.

This is not a book of moral philosophy, but it is a lively, learned, and sometimes passionate account of what virtue is and why it matters. If *The Moral Sense* succeeds in its aim of persuading people that they need not feel self-conscious or old-fashioned when they invoke the strictures of traditional morality or reject the proposed panaceas of would-be pundits who claim to be offering a sure-fire prescription for the remolding of infinitely malleable human clay, it will, in some measure, help make this a better world. ■

Contributing Editor Loren E. Lomasky is a professor of philosophy at Bowling Green State University.

Beyond Blue

What is depression?

By Jacob Sullum

Good Mood: The New Psychology of Overcoming Depression, by Julian L. Simon, La Salle, Ill.: Open Court, 307 pages, $52.95/$18.95 paper

Listening to Prozac, by Peter D. Kramer, New York: Viking, 409 pages, $23.00

I get depressed on Sundays. I'm not sure exactly why. Maybe it's emotional conditioning, the anticipation of work, or the burden of free time. Maybe it's a biochemical phenomenon. Whatever the cause, I tend to feel unaccountably sad on Sunday afternoons.

No big deal. But if you knew a way to avoid the Sunday-afternoon blues—say, an attitude adjustment or a handy little pill with no unpleasant side effects—I'd be interested.

Julian Simon also used to be depressed on Sundays—and every other day of the week. This *was* a big deal. As the distinguished University of Maryland economist describes it in *Good Mood*, he was depressed "for 13 long years from early 1962 to early 1975. When I say that I was depressed I mean that, except for some of the hours when I was working or playing sports or making love, I was almost continuously conscious of being miserable, and I almost continuously reflected on my worthlessness. I wished for death, and I refrained from killing myself only because I believed that my children needed me....Endless hours every day I reviewed my faults and failures, which made me writhe in pain. I refused to let myself do...pleasurable things...because I thought that I ought to suffer."

Simon's problem and mine are obviously quite different. Indeed, according to the definition of *depression* that he uses—prolonged sadness, accompanied by feelings of low self-worth, helplessness, and hopelessness—my experience does not even qualify. It is merely "the garden variety of the blues that come and go in a day or a week."

Still, Simon's overwhelming, 13-year-long depression and my mild, occasional dysphoria are both cases of mysterious sadness with a variety of possible psychological and biological explanations. And both might respond to psychotherapy or drugs. Simon, in fact, overcame his own depression through the cognitive-therapy methods he describes in his book. These techniques, which focus on changing self-destructive ways of thinking, are intended for people who are depressed in the noncolloquial sense. But they probably could do some good for just about anybody who suffers because of unreasonable self-criticism. Simon's approach certainly appeals to me as a way of dealing with everyday problems of living, although I have never experienced anything approaching the ordeal that he went through.

Simon did not try anti-depressant drugs, but he writes that "I...probably would and should have tried such drugs during my long depression if they had been as well-established as they now are." Prozac, the anti-depressant that psychiatrists are most enthusiastic about these days, was not available until December 1987. Since then it has helped many severely depressed people escape psychological states as bad as or worse than Simon's. And as psychiatrist Peter D. Kramer details in his thoughtful, elegantly written book, *Listening to Prozac*, even mildly depressed people like the drug, which has few significant side effects. (An appendix to the book persuasively debunks reports of suicides and murders allegedly caused by Prozac.) Kramer describes several individuals, active and productive but vaguely unsatisfied, who found they enjoyed life more while taking Prozac. Psychiatrists generally do not prescribe Prozac for the Sunday-afternoon blues, but who knows? It might just do the trick.

The apparent versatility of cognitive therapy and Prozac suggests that deep, incapacitating depression sits on the same continuum as the chronic blahs and the periodic blues. If so, psychiatrists have some explaining to do. A continuum view of depression raises uncomfortable questions about their scientific claims and legal privileges.

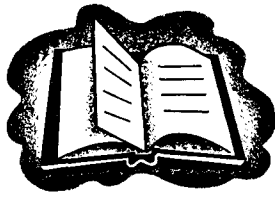
Both Simon and Kramer call severe depression a disease. For Simon, this label is largely metaphorical. He speaks of controlling the "symptoms" of depression (which he agrees anti-depressants can do), as opposed to curing the "disease" itself (which he thinks requires psychotherapy). But in describing the various factors that might lead to depression, Simon gives little weight to biology. For Kramer, depression seems to be an illness in the same sense that cancer is; it can be traced to a physical abnormality, whether in the structure of the brain or in the production and use of neurotransmitters and hormones.

A continuum view of depression is not necessarily inconsistent with the notion that severe depression is a disease. Diabetes and hypothyroidism, for example, are matters of degree; in these and other cases, doctors have to decide, somewhat arbitrarily, when an organ's functioning is far enough from the norm to constitute an illness. But depression is different from such conditions in a crucial respect: No one can identify the physical defect that supposedly underlies it. As Kramer admirably demonstrates, people can and do *speculate* about a biological mechanism. In the end, however, they have to admit (if they are honest) that no one really knows how depression works or what causes it.

Kramer offers a great deal of intriguing speculation about the

biological roots of both depression and personality. The main effect of Prozac, for example, is to boost the level of the neurotransmitter serotonin in the synapses between brain cells, suggesting that a deficiency of serotonin leads to depression. But there are problems with this hypothesis: Some depressed people do not respond to Prozac, and some respond to drugs that do not act on serotonin. Anti-depressants that raise serotonin levels do so within hours, but people who take them generally do not feel an effect for weeks.

"Biologists do not know what depression is," Kramer concedes. "The reigning model at the cellular and chemical level, the biogenic-amine hypothesis [tying depression to shortages of serotonin and norepinephrine], is demonstrably false or incomplete. Understanding of minor mood disorders, or normal variants, is even more primitive....About affective and social temperament, the experts know least of all....The biological study of the self is so primitive as to be laughable."



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In light of this ignorance, does it make sense to call depression a disease? Thomas Szasz and other critics of the medical model have long complained that psychiatrists tend to view every thought, emotion, and behavior they do not like as the symptom of a hypothetical illness. Although he is by no means ready to join the dissenters, Kramer, too, seems troubled by this tendency. The qualms surface in his discussion of Prozac's impact on personality.

Kramer reports that a sizable minority of depressed people who take Prozac undergo marked personality changes. One of his patients, for example, "became less bristling, had fewer rough edges." He also lost interest in pornographic movies, which he had long insisted that his wife view with him. Another felt less serious about life and less driven to self-sacrifice for the sake of others. A third overcame lifelong shyness and began to date regularly. Kramer finds these changes vaguely disturbing, and much of his book is an attempt to identify the reasons for this unease.

Kramer notes that Prozac can alter a person's self-concept, so that she feels "normal" under the drug's influence and "not herself" when she stops taking it. Such people retain the memories they've always had (as well as the unchanged aspects of their personalities), and in this sense their identities remain intact. Nevertheless, individuals transformed by Prozac raise some interesting questions about the nature of the self. Of course, they are hardly unique in this respect. Long before the advent of modern anti-depressants, the reformed drunk, the religious convert, and Ebenezer Scrooge raised similar questions.

But Kramer worries that drugs like Prozac will expand the bounds of psychiatry and medicine to include treatment of conditions that heretofore have been viewed as personality traits. "Confronted with a patient who had never met criteria for any illness, what would I be free to do?" he asks. "If I did prescribe medication, how would we characterize this act?...Now that questions of personality and social stance have entered the arena of medication, we as a society will have to decide how comfortable we are with using chemicals to modify personality in useful, attractive ways. We may mask the issue by defining less and less severe mood states as pathology, in effect saying, 'If it responds to an anti-depressant, it's depression.' Already, it seems to me, psychiatric diagnosis has been subject to 'diagnostic bracket creep'—the expansion of categories to match the scope of relevant medications....How large a sphere of human problems we choose to define as medical is an important social decision."

Kramer is right to be concerned, but the way he frames the issue reveals some assumptions that are worth questioning. He identifies the development of Prozac-like drugs as the crucial step down the slippery slope toward universal mental illness. Nowhere in the book does he address psychiatry's conceptual leap from physical diseases with mental manifestations, such as syphilitic insanity, to the unproven assertion that certain emotions, thoughts, and behaviors are caused by underlying diseases. So long as this can simply be assumed, psychiatrists are free to define anything they want as illness, including shyness, nervousness, oversensitivity, obnoxiousness, and various bad habits. Check out the latest edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, and you will see that Kramer's vision of arbitrary medicalization has already come to pass.

It is not much of an improvement to say that a condition should be called a disease only when it has something to do with biology, or when it can be affected by drugs. Everything we think or feel—including envy, bigotry, and murderous rage—is presumably associated with phenomena in the brain. Many substances, including legal and illegal recreational drugs, can affect such psychological states. But that does not mean these thoughts and emotions are symptoms of diseases. It is certainly possible to accept the notion that mind and body interact without concluding that every negative result of that interaction should be treated by a physician.

When Kramer says that "we as a society" will decide which problems should be considered medical, he must mean himself and the rest of the APA. After all, it is psychiatrists and other physicians who are legally empowered to control access to Prozac. This is the source of Kramer's dilemma: To prescribe or not to prescribe? If people were free to ingest whatever chemicals they wanted, with or without expert guidance, each deci-

sion would not require a determination of what constitutes illness.

Most Americans are uncomfortable with the idea of pharmacological freedom. It's one thing to take Valium for anxiety disorder or Prozac for depression; those are accepted medicines for recognized diseases. It's quite another to smoke pot to relax or inject heroin to make a miserable life bearable. Kramer is perceptive enough to sense that this may be a distinction without a difference. He wonders how using Prozac to enhance someone's social life "could be distinguished from, say, the street use of amphetamine as a way of overcoming inhibitions and inspiring zest. ...People take street drugs all the time in order to feel 'normal.' Certainly people take cocaine to enhance their energy and confidence." Once you grant the validity of this analogy, it's hard to justify the double standard created by drug prohibition on the one hand and mandatory prescription on the other. Why should people have to beg permission when they want to alter their consciousness?

Prozac could enhance individual autonomy by giving depressed people another option for improving their lives. Yet it could also enhance the power of the medical establishment, making people more dependent on physicians.

Unlike Prozac, Simon's approach to depression does not require clearance from an M.D. Indeed, he urges readers to try out his techniques on their own, consulting a therapist or counselor only if they feel it's necessary to get started. Purchasers of *Good Mood* can even receive a free copy of a computer program that is designed to help reveal the aspects of their thinking that get them into trouble.

Building on the work of cognitive therapists such as Albert Ellis and Aaron Beck, Simon offers a plausible analysis of the psychological mechanism behind depression. He focuses on the idea of negative self-comparisons, in which the individual contrasts what he takes to be his current situation with a benchmark state. When someone frequently makes such comparisons, Simon says, he will tend to be sad. If he also feels helpless to change his situation, he will be depressed.

Simon offers a number of ways to escape depression, all of which require self-discipline, thorough introspection, and hard mental work. The first step is to make the negative self-comparisons explicit. Then they can be attacked from a variety of angles: Are the depressed person's perceptions accurate? Can she change her current situation? Is the benchmark she is using appropriate? How important should a given self-comparison be to her happiness? Can she train herself to make different comparisons or to make them less frequently? Can she draw on deeply held values to make the self-comparisons seem less significant?

Simon's approach will not appeal to everyone. Some will consider it too rational, too mechanical, or simply too difficult. But Simon's own experience and those of others who have used his methods, coupled with research on cognitive therapy generally, suggest that many people could benefit from the techniques described in *Good Mood*. Certainly his confidence that "you have the power to alter your mood by changing your current patterns of thought" is inspiring, especially given his own success.

Both Kramer's emphasis on Prozac and Simon's emphasis on Self-Comparisons Analysis might seem to imply that depression is a uniform phenomenon with the same cause in every case. But a close reading of the two books reveals that a host of factors—including inherited temperament, childhood experiences, recent events, habits of thought, moral values, fatigue, and health problems—might play a role in depression. A flow chart in the back of *Good Mood*, difficult to follow even though it is "stylized and simplified," suggests the complexity of the problem.

Although Simon is pushing the advantages of cognitive therapy and Kramer is relating the wonders of Prozac, each grants that the other's approach has a place. Simon says anti-depressants can be useful as a stopgap measure, though not as a long-term solution. Kramer acknowledges that cognitive therapy works for some people, and he says "psychotherapy remains the single most helpful technology for the treatment of minor depression and anxiety." The two authors also agree that dredging up the past may be unnecessary. Both Prozac and Self-Comparisons Analysis deal with a depressed person's current state of mind, regardless of how he got there.

Kramer, who offers counseling in addition to dispensing drugs, suggests how the psychological and biological approaches to depression might be reconciled: Whatever your inborn propensities, experience affects the structure and functioning of your brain. At least some of those changes can be reversed or compensated for either directly (through drugs) or indirectly (by altering your thinking). In this light, Kramer's pharmacotherapy and Simon's Self-Comparisons Analysis may be two sides of the same mind-body coin.

It's clear how Simon's approach empowers the individual. But Prozac, too, could enhance individual autonomy by giving depressed people another option for improving their lives. Given the current legal and cultural climate, however, it probably will also enhance the status and power of the medical establishment, making people more dependent on physicians. "To the extent that medications are important agents of personal transformation," writes Kramer, "change becomes ever less a matter of self-understanding and ever more a matter of being understood by an expert." Whether Prozac and future drugs like it ultimately have a liberating or enslaving impact may hinge on who controls them. ■

Jacob Sullum is managing editor of REASON.

Paragons Or Pariahs?

Arguing with Asian-American success

By John J. Miller

Asians and Pacific Islanders in the United States, edited by Herbert Barringer, Robert W. Gardner, and Michael J. Levin, New York: Russell Sage Foundation, 384 pages, $42.50

The Asian American Movement: A Social History, by William Wei, Philadelphia: Temple University Press, 355 pages, $34.95

Making and Remaking Asian America Through Immigration Policy, 1850–1990, by Bill Ong Hing, Stanford: Stanford University Press, 340 pages, $45.00

Chinatown: A Portrait of a Closed Society, by Gwen Kinkead, New York: HarperCollins, 215 pages, $12.00 paper

Asian Americans: Oral Histories of First to Fourth Generation Americans, by Joann Lee, New York: The New Press, 235 pages, $11.95 paper

A recent *Los Angeles Times* poll asked Asian Americans in Southern California about their job opportunities and living conditions. Eighty-three percent described them as good or very good, compared with 77 percent of whites, 55 percent of Hispanics, and 33 percent of blacks. Little wonder. Their satisfaction springs from many sources. Asian Americans have the highest median household income, the highest percentage of managerial and technical jobs, the lowest unemployment rate, and the lowest crime rate of any racial or ethnic group in the country, including whites.

As entrepreneurs, they have reinvigorated dozens of urban areas. Their achievements on the education front are epic. In college student lingo, MIT is now "Made in Taiwan" and UCLA is the "University of Caucasians Lost Among Asians." New immigrant waves make these gains increasingly visible—Asian Americans are the country's fastest growing racial or ethnic group. They currently make up 3 percent of the general population, including 10 percent of California's. Who can really doubt that Asian Americans have "made it" in America?

These purported accomplishments threaten to throw the country's black-and-white race debate out of kilter. In reaction, Asian-American civil-rights leaders try to debunk the Asian-American success story. Anti-Asian sentiment is on the rise, say the critics, from auto assembly lines in Detroit to the Broadway hit *Miss Saigon*, in which characters refer to Asians as "slits" and "greasy Chinks." Economic indicators touting Asian-American success are misleading: Per-capita income has always lagged behind that of whites, professionals hopelessly bang their heads against a glass ceiling, and many inner-city merchants, especially Koreans, now face an increasingly hostile clientele resentful of their prosperity. The "model minority" myth, which promotes Asian-American achievement, covers up genuine problems in the community and serves merely to pit racial and ethnic groups against each other. As an oppressed minority, Asian Americans both need and deserve the same special governmental protections accorded to other disadvantaged groups.

There are elements of truth to both of these views, but neither is completely accurate. Asian Americans are neither paragons nor pariahs, to use Smith College sociologist Peter Rose's apt terminology. For the real scoop on the state of Asian America, turn to the Russell Sage Foundation's excellent *Asians and Pacific Islanders in the United States*. The best recent demographic overview, it makes a strong case for Asian-American success without overlooking genuine problems.

With all the talk about the model minority, it's easy to forget that there's really no such thing as an "Asian American." Chinese, Filipinos, Japanese, Koreans, Asian Indians, Vietnamese, and others share no common tongue, faith, or history. Enormous differences in education, employment, and income separate these groups. To assume Asian Americans have a pan-ethnic identity—as politicos and professors do when it's to their advantage—is often futile and misleading.

Some Asian ethnic groups certainly do make the United States look like a land of unlimited opportunity. The mostly native Japanese-American population, for instance, seems "to have reached essential parity with whites." The largely refugee Vietnamese-American population, on the other hand, displays "characteristics more typical of 'castelike' minorities—blacks, American Indians, and Hispanics." Many differences exist even within ethnic groups. East Coast Filipinos look like a socioeconomic elite; on the West Coast, they more closely mirror Hispanics. The reverse is true for Chinese.

Nonetheless, it's hard to argue with success, no matter how generalized it may be. Asian Americans can boast of extraordinarily stable families, very little divorce, and high levels of education. Most (but not all) of their per-capita income disadvantage can be explained by immigrant status. Whatever troubles remain—even for the problematic Southeast Asian cohorts—

might simply require patience: "The longer immigrants had resided in the United States, the more they resembled white Americans socially. Or outdid white Americans." The editors stick close to their numbers and refrain from making even modest predictions, but this book makes it easy to believe that almost complete economic and social assimilation will ultimately embrace the vast majority of Asian Americans.

Assimilation has never lacked Asian-American opponents, however. During the heady days of the 1960s liberation movements, "Asian Americans became acutely aware that they had more in common with African Americans than with European Americans," writes activist-turned-author William Wei in *The Asian American Movement*. Of course, not all Asian Americans shared this sentiment. In fact, most didn't, a point Wei conveniently skips over. He does admit, however, that the movement sprang from a handful of Chinese- and Japanese-American student radicals who tried to mobilize under a pan-ethnic banner. Only by forging "a new sociopolitical entity"—the "Asian American"—could their otherwise small and divided sub-ethnic populations gain the numerical clout to hop on the civil-rights bandwagon and grab some attention.

With all the talk about the model minority, it's easy to forget there's no such thing as an "Asian American." Chinese, Filipinos, Japanese, Koreans, Asian Indians, Vietnamese, and others share no common tongue, faith, or history. To assume they have a pan-ethnic identity—as politicos and professors tend to do—is futile and misleading.

The Asian American Movement, disorganized and quarrelsome from day one, spent much of its energy protesting the Vietnam War, which Wei interprets as a racist effort to keep Southeast Asia colonized by Western powers. The war particularly concerned Asian-American radicals, Wei says, since it promoted something he calls "Gookism"—white America's inability to distinguish between "the Vietnamese, Laotians, and Cambodians (among other Asians) encountered overseas and Asian Americans at home." Wei never considers whether his beloved movement's attempt to manufacture a pan-ethnic identity might have exacerbated the rest of America's alleged inability to see the diversity of Asian America.

Predictably, the movement floundered. It lacked "a nationally known leader" and even "a set of specific aims." Wei's chronicle, though it assumes a tone of high seriousness, actually reads like a parody of radical-left incompetence. Members of the movement participated in Maoist purges like sport, battled among themselves over poetry readings, and regularly hurled silly invectives against the United States, which Wei calls "one of the most oppressive systems of racial prejudice and class domination that has ever existed in any democratic country." Despite these problems, the movement limps along. Wei reports that younger soldiers have "emerged to participate in the multicultural education movement."

Wei's gloom and doom is exaggerated and simplistic, but a serious study of the Asian-American experience need not be all sweetness and light. In *Making and Remaking Asian America Through Immigration Policy, 1850–1990*, Bill Ong Hing offers a valuable chronicle of the many barriers that Asian immigrants have faced. Once in high demand to harvest Hawaiian sugarcane fields and lay the transcontinental railroad, Asian immigrants continually suffered from varying degrees of nativism and working-class resentment during the 19th century. The Chinese were subjected to the first legal restrictions in 1870, which began what Hing calls the "cycles of rejection and acceptance" that occasionally accepted but mostly rejected Asian immigrants until 1965. Other anti-Chinese laws came in 1875, when Congress essentially banned Chinese women, and in 1882, when it forbade the entry of "idiots," "lunatics," and "Chinese laborers."

The Japanese fared somewhat better, but laws in 1907 and 1924 effectively cut off their immigration pipeline. Restrictions affected Filipinos in 1934. Asian Indians and others who had not migrated in very large numbers were limited in 1917. In a useful appendix, Hing buttresses his thorough analysis by excerpting every significant law and court ruling on Asian immigration between 1850 and 1923, including the important but obscure Gentleman's Agreement, negotiated between the United States and Japan by telegram in 1907 and 1908.

Hing carefully describes each of these laws and explains how they helped shape major Asian-American communities. The 1875 anti-Chinese law, for example, combined with anti-miscegenation laws already in place in California and Oregon to deprive Chinese male laborers of the chance to marry and have children. Fifteen years later, Chinese-American men outnumbered women by nearly 27 to 1. Denied the opportunity to form families, men came to rely heavily upon the social networks of Chinatown enclaves. These communities protected them from the vicious mob attacks that frequently erupted in the late 19th and early 20th centuries. Anti-Asian hostility motivated the formation of tightly knit associations that made Chinatowns and their inhabitants seem secretive and off-putting to mainstream America.

Despite much assimilation, such enclaves persist to this day, helping both legal and illegal immigrants adapt to life in America. Gwen Kinkead's *Chinatown: A Portrait of a Closed Society* offers a brief but tantalizing glimpse at New York City's bustling Chinese community. She spent two luckless years desperately trying to gain access to this city within a

city. With translator in tow, however, she slowly won over enough of its inhabitants to peek into its crowded apartments and garment sweatshops. Her colorful anecdotes and character portraits reveal an industrious and inward-looking place.

Mr. Lin, for instance, peddles firecrackers and toys without a license. Every day he hustles his wares on the street and each night returns to a one-bedroom apartment shared with seven other men. He has managed to save about $18,000 of his $22,000 income for each of the last four years. When he gathers enough money, he hopes to start a small business. Lin has lived in New York for six years, but he has not often left Chinatown, on the lower east side of Manhattan. So Kinkead makes him an offer:

"I asked him if there was any place in the city he wanted to visit. He thought a minute. 'I hear about her, not too far from here,' he said, cupping his hands above his head like a Thai dancer.

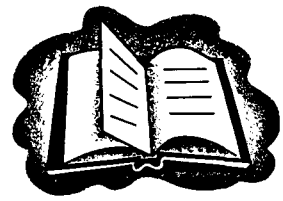
" 'The Statue of Liberty?'

" 'Sometime I go there,' he affirmed. 'That's one thing I do.'

"I offered to take Lin there, or to any other place he wished to see. Lin decided that the Statue of Liberty was too far, and picked my second suggestion—Central Park, which he'd never heard of. We rode uptown in a taxi. Lin was very uneasy. 'No go far, right?' he asked several times. 'Not go far.' "

The bulk of Kinkead's book concerns Chinatown's criminal tongs, with a special emphasis on federal efforts to bust the Chinese-dominated Southeast-Asian heroin trade. According to Kinkead, the tongs and their lackeys maintain a tight grip on the community through a powerful extortion racket. "In Chinatown," she writes, "there is a social order so ruthless that its very existence seems to be against the law, but, because the area is so isolated from the rest of society, most of the people who live here accept it as normal." Locals fear to talk about the situation, especially to a reporter holding a pen and scribbling notes. Despite her best intentions to demystify the place, Kinkead's decision to focus so heavily on crime helps exoticize Chinatown even further.

Still, her final chapter is a splendid metaphor for Chinatown's isolation complex. Kinkead describes a typical Sunday in which thousands of New Yorkers descend upon Chinatown's corner of lower Manhattan to experience its restaurants and entertainment. Noisy day-trippers clog the main thoroughfare, so she escapes by stepping into a lonely, time-warped alleyway. She comes upon a dirty courtyard and discovers "a gritty, gray, forlorn place, a patch of old Chinatown more or less untouched since the 1880s." She climbs a stairway and sees a door with a sign that blesses those who pass. "I knock. A frail old man, like a withered moon, appears. He greets me quizzically. He has lived in Chinatown for sixty years, he says, and has never spoken with a white person."



Asian-American experiences are full of difficulty and even regret, but also opportunity and assimilation. The fact that Asian Americans have activists representing them says much about their accomplishments. Immigrants don't have the time to carp about a life full of promise—only their bourgeois children can manage that feat.

Joann Lee's collection of oral histories, *Asian Americans*, also offers a penetrating look at ordinary lives. Its voices present no unified front: Many are grateful for the economic and social opportunities available in the United States, others disenchanted by their own failures or turned off by a confusing, almost anarchic society. Most, however, seem to place some value on the freedom they have found here: "You decide what you want to be, then you work hard, and can achieve it," says Siu Wang Lai, a Chinese immigrant who spoke through an interpreter. But she also realizes that American freedom has its price: "The bad thing is the relaxed laws and the lack of family values." Like many immigrant parents, she worries about her children and whether they will lose touch with not only their families but also the home-grown cultural traits of diligence, discipline, and respect that gave their parents an edge over the competition.

Lang Ngan, who helps process Southeast-Asian refugee resettlement claims, corroborates: "I get a lot of complaints from parents. They say they come to this country to give their children the chance for a better education, but now they lose their children. That is the culture shock. The children now think they are free to do anything they want."

By these accounts, the various Asian-American experiences appear much like other ethnic experiences: full of difficulty and even regret, but also opportunity and, ultimately, assimilation. Despite what the naysayers proclaim, Asian Americans will continue their undeniable success. Indeed, the fact that Asian Americans even have activists trying to represent them says something about their accomplishments. Immigrants, of course, don't have the time or the interest to carp about a life full of promise—only their bourgeois children and grandchildren can manage that feat.

But the activists do raise larger questions, albeit unintentionally: Will Asian Americans hang on to the cultural traits that have helped them open stores, attend college, and keep their families together, or will they cast off that part of their heritage in an attempt to fit in with mainstream America? In short, will they assimilate out of the very qualities that have made their assimilation possible? ■

John J. Miller is associate director of the Manhattan Institute's Center for the New American Community.

Down to Details

Good and bad advice for managers

By Paul H. Weaver

Reengineering the Corporation: A Manifesto for Business Revolution, by Michael Hammer and James Champy, New York: HarperBusiness, 223 pages, $25.00

No Excuses Management: Proven Systems for Starting Fast, Growing Quickly, and Surviving Hard Times, by T.J. Rodgers, William Taylor, and Rick Foreman, New York: Doubleday, 296 pages, $35.00

Michael Hammer and James Champy's *Reengineering the Corporation* has been the past year's major management best seller, and on the strength of its success Hammer, a former business professor at MIT, has emerged as one of America's hot new management gurus, jetting hither and yon to talk to conclaves of corporate executives for daily fees running into five figures. The book offers an interesting glimpse of the state of the big corporation in the '90s and of the management doctors who tend to its ills.

Hammer and Champy style themselves radicals. The traditional big corporation is dead, they argue. The principles it rested on—the division of labor and hierarchical control—have been invalidated by new competition and information technology, and if the General Electrics and Citicorps and Procter & Gambles want to survive, they must transform themselves into substantially unhierarchical, self-managing networks of teams avid to serve the customer, beat the competition, and embrace change. In effect, the authors argue, the big corporation must recast itself in the image of the traditional small firm.

Reengineering the corporation, the authors argue, means ceasing to think in terms of jobs and objectives and other such traditional management concepts and starting to think in terms of "process." The entire "work process" must be reconceived and restructured, with everything up for grabs and nothing taken as a given. Reengineering requires strong leadership from the top. It empowers people at the bottom.

As for what specifically an executive could do to implement Hammer and Champy's program at his company, the book is curiously silent. To be sure, it describes the experiences of some well-known companies that have reengineered themselves. It lists mistakes often made by firms trying to take the reengineering cure. It describes the benefits of the process. But the case studies are superficial and the lists are short. Both enthusiasts who want to go ahead with the authors' program and skeptics who want more information are left with little choice but to call Hammer and Champy's offices and arrange for an in-person consultation, suitably compensated of course.

In other words, behind the authors' professed radicalism, there is—nothing much. The authors' advice is so general, so far removed from real life and practical experience, so anxious to avoid giving offense, so desirous of making a good impression as to be almost totally devoid of practical value. Telling a CEO at IBM or G.M., as Hammer and Champy effectively do, to "be radical" or "start with a clean sheet of paper" without getting down to cases is about as useful as advising him, as a way of improving his relationships with subordinates, to "be a good listener."

The Polonius-to-Laertes-style homilies, in the context in which Hammer and Champy present them, are not just unhelpful, they're positively pernicious. At the core of the plight of the big corporation these days is a powerful capacity to deny painful truths, tell comforting lies, and thereby make it possible for business as usual to go forward even as everyone gives lip service to the idea that they're finally facing up to reality and putting a bad old dysfunctional past behind them. With its glib generality, Hammer and Champy's best seller is a recipe for precisely such a defense of business as usual.

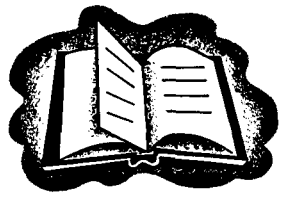
In this, Hammer and Champy are very much in the tradition of the modern management bestseller, the bizarre genre brought into being a decade ago by Tom Peters and Robert Waterman's *In Search of Excellence*. The book itself was an interesting exploration of the conditions under which good performance occurs in big firms. Its message, however, was grossly distorted by the circumstances surrounding its publication—severe inflation, a long recession, and the shocking competitive decline of some of America's biggest corporations. Anxious Americans read Peters and Waterman as saying that, contrary to the impression given by recent events, the IBMs and Fords and International Harvesters were still the rocks of economic vitality they'd always been. *Fortune* 500 firms bought copies of *Excellence* by the thousands and distributed them far and wide to spread the good news. Ever since, the nonfiction best-seller lists have seldom been without a feel-good management book that cashes in on the growing uncompetitiveness of big companies in the United States by pretending to acknowledge their need to change. With their pseudo-radicalism, Hammer and Champy are just the latest in a long list of doctors of denial.

No Excuses Management tells the story of the management techniques and perspectives with which T.J. Rodgers built innovative, fast-growing, profitable Cypress Semiconductor from a 1983 Silicon Valley startup to a $300-million chipmaker with plants from Texas to Taiwan. A

sharper contrast with Hammer and Champy is hard to imagine. Rodgers is specific where they are abstract, practical where they are academic, savvy where they are naive. His book distills the lessons of direct personal experience, whereas Hammer and Champy dimly observe others from afar. A reader finds no loose chitchat in this book about the decline of hierarchy—this is every inch the testament of a boss who insists on being in charge, expects to win, and doesn't mind being in your face if that's what it takes to get the job done. It is an outstanding contribution to the literature of American management that deserves a place in the tiny circle of classic books by practitioners of management, including Alfred Sloan's *My Years with General Motors* and Chester Barnard's *Functions of the Executive*.

Rodgers has been making a name for himself in recent years as the "bad boy of Silicon Valley," in the phrase of a *Business Week* cover story. He's a Stanford Ph.D. in electrical engineering and onetime Dartmouth varsity football player who sometimes receives visitors to his office dressed in his running clothes. As CEO of Cypress, he not only broke ranks with the industry to oppose federal subsidies, antitrust exemptions, and other government-given goodies for U.S. chipmakers but struck terror in the hearts of procrastinators everywhere when he created "killer software" to automatically shut down the computers of business units with projects that have fallen behind schedule by a certain length of time.

Rodgers got the idea for the software when, at a management meeting, exasperated by the lateness of some vice presidents in submitting quarterly performance reviews for the employees in their units, he yelled, "What do you people want me to do? Cut off your paychecks until your managers do their reviews?" A light bulb went off. Rodgers stopped the meeting, summoned the human resources director, and issued the fateful instructions to take effect in two weeks' time. One of the eventual victims was a Cypress founder, who immediately came to the boss to object that he had tuition and mortgage payments to meet. "You won't get another paycheck until your manager does his reviews," Rodgers replied. "I'm prepared to watch your kid drop out of school and your house be auctioned off on the courthouse steps." Rodgers adds: "For effect, I followed my macho tirade with my best impression of the vacant glare of a crazed killer, Robert De Niro style." Two days later the reviews were in and the vice president got his paycheck.



At the core of the plight of the big corporation these days is a powerful capacity to deny painful truths, tell comforting lies, and thereby make it possible for business as usual to go forward even as everyone gives lip service to the idea that they're finally facing up to reality and putting a bad old dysfunctional past behind them. With its glib generality, Hammer and Champy's best seller is a recipe for precisely such a defense of business as usual.

The book exudes Rodgers's combative style at every turn. The cover features an extreme close-up portrait from which he glares balefully at the prospective reader. Inside, the book reproduces a memo in which the CEO takes two line managers to task for trying to shift responsibility for a shared problem onto one another and denounces the data and arguments they used as "bullshit." Another memo, entitled, "FOLLOWING THE RULES—THIS MEANS YOU," begins, "I was very disappointed today to find out that—once again—you deliberately violated a Cypress specification." A third memo to the managers of one of the company's "fabs" (factories) notes that their billing practices ranked last in a survey of customer satisfaction and tells them to remedy the situation. "I do not view the solution to this problem as a 'program' in which you use 'kaizen' to reduce the defect level over time," the memo concludes. "I view this problem as a 'slam-dunk, kick-some-ass, get-it-done-now problem.' The next billing should be perfect. Thank you in advance for your cooperation."

Once one adjusts to T.J.'s testosterone-drenched persona, this book offers a candid and engaging picture of the way an unusually thoughtful executive does his job in a challenging industry. Its outstanding quality is a passionate, almost novelistic sense of reality. A fascinating chapter describes Rodgers's intriguing computer-based system for giving salary raises based on both merit and equity considerations. There is a long example told with such a relish for the practical issues and physical activities involved that it even identifies the keys Rodgers punches on his keyboard to activate various tests built into Cypress's special compensation software. (Included with the book is a floppy disk for IBM-compatible PC's that demonstrates the program.) Another chapter tells how Cypress developed its elaborate and apparently quite effective system for hiring people in an industry in which talent is the single most important resource.

This is no mere compendium of management technique, however. At the core of Rodgers's book is a critique of and strategy for dealing with the politics and careerism that have made the large corporation so ineffective in our time. Rodgers is a bear on internal politics. In a memo entitled, "Politics Is Forbidden at Cypress," the boss scolds one of his top managers: "I thought you would have picked up this fundamental feature of our culture by now. We do not undercut each other. We do not plot

against each other. We do not tell stories about other people when they are not there to defend themselves."

Rodgers's main strategy for minimizing corporate politics at Cypress is an extraordinary policy of openness and deliberation. Essentially all information about every aspect of company operations is available to essentially every employee at all times. If a shipping clerk wants to see how up to date or behind his supervisor, or his supervisor's supervisor, or even the chief executive, Rodgers himself, is with respect to his schedule of goals, he can access the person's file with a few strokes of the keyboard, no questions asked. As a result, there are few secrets, and correspondingly few opportunities for people to empower themselves at the expense of their fellow workers.

More important, the key management decisions to authorize new capital spending and new positions are made in a weekly meeting at which all managers are present, every request competes with every other request, and no request for money or personnel is granted unless the unit involved—and, in general, the company as a whole—has had a record of increasing its output per employee. The meetings are naturally contentious, but they get all the issues out on the table, guarantee that a consistent set of standards is applied across the board, make favoritism and inside deals difficult, and impress on everyone the absolute necessity of constantly increasing productivity. Rodgers reports that when he (mistakenly, he now believes) suspended the committee for almost a year, when profits and productivity were off and new spending and hires were on hold, hallway politicking for special dispensations from the CEO picked up dramatically—and that without the presence of other managers and competing information, he found himself hard pressed to say no to special pleading. When regular capital-and-headcount meetings resumed, the politics subsided.

Most ambitious of Rodgers's anti-politics strategies is Cypress's effort to turn itself into a confederation of largely autonomous entrepreneurial firms. At a certain point in its growth, Rodgers concluded that Cypress was beginning to fall prey to the bureaucratic tendencies that afflict big companies everywhere and decided to generate future corporate growth through substantially free-standing startup enterprises, undertaken either by talented employees or by ambitious newcomers. The company would provide venture capital, have a seat or two on the board, and exclusive rights to the product, which would go into Cypress's catalogue. The entrepreneurs would be entitled to the normal founders' rewards if the venture was successful. Rodgers reports that once the managers of his big Texas fab became equity owners of the facility they ran, their demands for capital and headcount fell sharply and they found ways to do more with less.

As CEO of Cypress Semiconductor, Rodgers not only broke ranks with the industry to oppose federal subsidies, antitrust exemptions, and other government-given goodies for U.S. chipmakers but struck terror in the hearts of procrastinators everywhere when he created so-called killer software to automatically shut down the computers of business units with projects that have fallen behind schedule by a certain length of time.

Rodgers evinces an ability unusual in a CEO—or any American these days—to admit mistakes. For example, a passage about Cypress's killer software casually acknowledges that, at the time it was being written, the CEO's own computer had shut itself down because a number of T.J.'s own tasks had fallen unacceptably behind schedule. There's nothing wussy or self-abnegating about this—T.J., it's clear, has about as much ambition and ego as it's possible to fit in a normal human psyche, and he obviously hates to be less than perfect at anything. But, on the evidence of this book, at least, when he screws up, he does admit it. As he told some new employees in Minnesota in a briefing on the Cypress culture, "We make no excuses when things go wrong" and "success does not go to our heads."

As much as any system, it's this willingness to subordinate even the CEO's own ego and convenience to the same rules and goals he sets for everyone else that accounts for the importance of this book and differentiates it from what Hammer and Champy have written. The problem of the big corporation today is, in the end, a problem of the disjunction—intellectual, psychological, and moral—between company interests and individual interests. Hammer and Champy scarcely recognize the problem, let alone offer a solution.

Rodgers sees the problem with crystal clarity, and if he doesn't have the entire answer to it, he certainly puts his finger on a big part of it. Rodgers shows that realism in the conduct of a business depends ultimately on the participants' capacity for idealism—for sacrificing present pleasures for the sake of future fulfillments, for avoiding narcissistic politics and perks, and channeling personal pride and ambition to achieve corporate success. Not a new lesson, to be sure, but one that a lot of supposedly sophisticated people these days evidently need to study again. ◼

Contributing Editor Paul H. Weaver, a writer in Palo Alto, California, is the author of The Suicidal Corporation.

NO REFUGE

BY STEVEN W. MOSHER

In 1988 I helped a pregnant Chinese woman, Chi An, win political asylum in the United States on the then-novel grounds that she was fleeing a forced abortion. The Immigration and Naturalization Service bitterly opposed her application from the beginning. Those who resisted China's one-child policy, INS attorneys argued, were merely social malcontents, not true political dissidents. Besides, they said, granting asylum to Chi An would "open up the floodgates" to a torrent of illegal Chinese immigrants.

I regarded the INS position as naive and troubling. In China dissent from any government policy—be it the prohibition on underground publications or the ban on second children—is an act of political rebellion. As far as "opening up the floodgates" was concerned, how could Chinese in any numbers escape from that closed society, much less cross the vast Pacific to our shores? To me, the INS arguments sounded like an attempt to exploit old, irrational fears of a "yellow peril."

Chi An's victory on August 5, 1988, established a precedent: Those Chinese arriving on our shores who could demonstrate a well-founded fear of persecution in connection with the one-child policy would henceforth be granted asylum. Still, contrary to the dire prophecies of the INS, only a few dozen Chinese filed claims for sanctuary on that basis during the next few years. Many, though not all, were granted permission to remain.

Then, on June 6 of this year, an old freighter named the *Golden Venture* went aground in New York Harbor. All 256 survivors claimed asylum, most on the grounds that they were fleeing the one-child policy. The following is the story of one such claimant, Chang Zhen, which I recount not because it is extraordinary but because it is typical. (I use pseudonyms for both Chang and his lawyer so as not to prejudice their case.)

Like many of the passengers aboard the *Golden Venture*, Chang Zhen was a native of Fuchoa city, located in Fujian province on the rugged southwest coast of China. Shortly after the birth of his first son in March 1991, he was visited by the director of birth planning for the city ward in which he lived. It was not a social call. There would be no second child, the director told Chang. Now that he and his wife had the one child permitted by law, she would have to submit to a tubal ligation, and the sooner the better.

INS officials haul in Chinese immigrants after the *Golden Venture* runs aground. Each one seeking asylum because of his opposition to China's birth-control policy has been denied.

WIDE WORLD PHOTOS

Secretly hoping eventually to have other children, Chang cut a deal with the director. In return for an 8,000-renminbi bribe—about a year's income—this official agreed to back off. Chang's wife would not have to be sterilized, but neither would she be permitted to have any more children.

There the matter rested until the following year, when Chang's wife again became pregnant. This time the birth-control official brushed off Chang's offer of a bribe. As the weeks passed, his demands that Chang's wife abort the "illegal" child she was carrying grew ever more insistent.

Then one day when Chang was at work, the official led a band of policemen to Chang's house. Chang's wife, now six months pregnant, was arrested and dragged off to the local medical clinic. A neighbor who witnessed the scene ran to warn Chang, who hurried to the clinic, but by the time he arrived it was too late. His unborn child was dead. Chang flew into a rage and threw himself at the birth-control official, pummeling him to the ground. Then he fled.

Realizing that he was now a marked man, Chang went into hiding at the home of a relative. He saw his wife only infrequently, for he was afraid that she would be followed and give away his hiding place. The police were looking for him, and if he were caught it would mean a long prison sentence. Attacking a birth-control official is a serious crime.

Chang's wife urged him to flee China. He couldn't stay in hiding forever, she told him, and if he showed himself too often in public he would surely be arrested. Chang didn't want to leave his wife and

young son, but he realized that he didn't really have a choice. Besides, he reasoned, he would be of more use to his family abroad, where he could work and send back remittances, than in a Chinese labor camp.

It was not easy to escape from China, even with the help of smugglers. Following their instructions, Chang first flew to the city of Kumming in the far south. He and eight others were taken by jeep to a place near the Burmese border. They crossed over that night and spent the next three weeks on foot, following their guide through the mountainous terrain of northern Burma until they reached the Thai border. Then it was on to Bangkok by truck and out to sea in a fishing boat. Fifty miles out in the Gulf of Thailand, they rendezvoused with a nondescript old freighter: the *Golden Venture*.

Six months later the *Golden Venture* lay aground on a sandbar at Rockaway, New York. The crew had abandoned ship even before the collision, leaving the passengers to fend for themselves. Chang and the others were taken into custody, then interviewed by the INS one by one. I wish to apply for political asylum, he told the official when it was his turn. I opposed the "one couple, one child" policy and fled China to avoid being punished.

When attorney Don Jonathan was assigned to Chang's case, he was surprised to find that an asylum hearing had been scheduled for only two days later. He quickly filed a motion to postpone the hearing, noting that he had not even had a chance to meet with his client, much less prepare a brief on his behalf. Under the circumstances, Jonathan expected his request for a three-week delay in the proceedings to be honored as a matter of course. But it was not. The immigration judge told him brusquely that the hearing would go forward as scheduled.

Working through an interpreter the day before the hearing, Jonathan quickly reconstructed his client's story. Despite the lack of supporting documentation—common enough in asylum cases—Jonathan thought that Chang had a strong case. He was a credible witness, and he had openly opposed the one-child policy. Were he to be deported back to China, there was little question that he would be persecuted.

Jonathan was even able to corroborate Chang's account of his wife's travail. A computer search revealed several accounts in the Western press of Chinese officials using physical force, dragging or pushing pregnant women to the medical clinics for abortions. Going into the hearing, Jonathan expected that Chang would be granted asylum.

The immigration judge listened intently to Chang's account of how his wife had been forced to undergo an abortion and how he had attacked the official responsible. In his questioning, the judge even seemed to indicate some sympathy for Chang's plight. Yet at the end of the hearing he ruled that "Chang's wife voluntarily aborted their baby with the assistance of the clinic." As far as Chang's subsequent actions were concerned, he was a mere criminal, "running from criminal prosecution." Chang's claim for asylum was denied.

The judge listened with apparent sympathy to Chang's account of his wife's forced abortion and his attack on the official responsible—and then denied the asylum request. He ruled that Chang's wife "voluntarily aborted their baby" and that Chang was a mere criminal, "running from criminal prosecution."

If Jonathan was surprised by the judge's ruling, which seemed totally contrary to fact, he was even more astonished by what happened next. Going off the record, the judge told Jonathan that he should appeal. "Your client has a strong case," he said. "I urge you to appeal my decision."

"But, Your Honor," Jonathan sputtered, "If you think my client has a strong case, why don't you simply grant him asylum yourself?" The judge was no longer listening.

"It was as if the judge had made up his mind not to grant Chang asylum even before hearing his testimony," Jonathan told me later.

What accounts for the unseemly haste with which the Chang case, and hundreds of similar cases, have been disposed of? The exclusionary mentality of the INS is well known. Early on in the *Golden Venture* saga, an INS official went so far as to claim that 99 percent of the asylum claims of those on board were bogus. But the people who judge asylum cases are not employees of the INS. Immigration judges are part of a separate Justice Department agency, the Executive Office for Immigration Review.

In an unusual move that must have had the approval of senior officials in the Justice Department, immigration judges from as far away as California and New York were flown to Baltimore at great expense to hear the *Golden Venture* cases. Some judges and clerks privately revealed to defense attorneys that they were under considerable pressure to process each claim as quickly as possible; hence the refusal to grant continuances. Did this pressure originate from within the Justice Department, or from even higher levels of government?

Attorneys tell of an official in the Baltimore INS office to whom they complained about how little time they were being given to prepare their clients' cases. "The White House has told us," this person is said to have responded, "that it wants 'all these Chinese bastards out of the country by October.' "

As of this writing, all but 14 of the 256 asylum seekers from the *Golden Venture*—and all of those who claimed that they were fleeing persecution for their opposition to China's policy of forced abortion and forced sterilization—have had their claims denied. Appeals have been filed on several grounds, including violation of due process. Final decisions from the Immigration Appeals Court in Arlington, Virginia, are expected by late October.

Contributing Editor Steven W. Mosher, director of the Asian Studies Center at the Claremont Institute in California, is the author of A Mother's Ordeal: Escape from One-Child China *(Harcourt Brace Jovanovich).*

PIPE DREAM

BY JACOB KRAMER

In early July, the city of Los Angeles was about to approve the use of Optiflex, a new kind of plastic pipe, in residential and commercial construction. Made of a heat-resistant version of polyethylene, the plastic used in milk and soda bottles, Optiflex does not corrode or rust. Unlike copper, it is not affected by acidic soils, and it won't rupture if frozen or shaken by a minor earthquake. Timothy Taylor, head of the city's Building and Safety Department, called Kerry Welsh, director of marketing for Optiflex USA, and told him the pipe was likely to pass muster. One month later, Taylor informed Welsh that Optiflex would not be approved.

Optiflex President Daniel Rossel (left) and Marketing Director Kerry Welsh probably won't be selling many pipes in California—thanks to local plumbers.

Between the beginning and the end of July, something happened to change Taylor's mind: On July 21 he received a letter from Adams and Broadwell, a law firm representing the Southern California Pipe Trades Council, District 16, an association of local plumbing and pipe-fitting unions. The staid legal language of the letter said that approval of Optiflex would be a "discretionary" judgment subject to the California Environmental Quality Act (CEQA). Taylor's experience taught him to read between the lines: " 'Don't miss anything, or we'll sue your ass.' That's how I interpreted it."

Why is an association of pipe fitters so concerned about the environment? Says Daniel Cardozo, a lawyer at Adams and Broadwell, "Our members are plumbers, and we're concerned about the integrity of the materials and the work that we do."

Taylor finds that explanation a little dubious. "I don't know whether this is a real safety issue, or a labor issue," he says. As it happens, Optiflex is easier to install than metal pipe and would cut down on the need for plumbers. The Pipe Trades Council's success at blocking approval of Optiflex illustrates how entrenched interests can use environmental legislation to protect their wallets.

Under CEQA, the state is required to conduct an extensive study of any project that has a "significant effect on the environment." If a locality is approving a project according to a state code, CEQA does not apply. But the state has no regulation for plastic pipes carrying drinking water inside a building. So Taylor's approval may have been a "discretionary" action subject to CEQA, meaning the pipe could not be approved without an environmental impact report. "I think the people at Optiflex are a little naive about CEQA regulations," Taylor says.

Frustrated in L.A., Welsh took his product to the state government in early August. But according to Ed King, chief of housing standards at the California Department of Housing and Community Development, the state right now "does not have the authority" to approve the pipe. California, it turns out, is mired in an environmental impact report on plastic pipe that it began 11 years ago, primarily at the behest of the Pipe Trades Council.

The Health and Safety Code of California requires the state to adopt the Uniform Plumbing Code, a set of standards published triennially by the International Association of Plumbing and Mechanical Officials. In 1982, the UPC allowed expanded use of plastic pipe, which previously had not been approved to carry drinking water within a building. But the Pipe Trades Council, along with some environmental groups, requested that the state examine the environmental effects of the expanded use of plastic pipe before adopting the relevant portion of the 1982 UPC.

Since the study began, the state has limited the use of plastics to those permitted in the 1979 UPC. Under the continual threat of legal action by Adams and Broadwell, the state eventually ran out of money. Now the environmental impact report is stalled, and no one knows when or if it will be finished. But that might just be the point.

"I think that was a tactic," says Travis Pitts, deputy director for the Division of Codes and Standards at the state Department of Housing and Community Development. He notes that plastic pipes have long been used in California to carry drinking water underground and in manufactured housing. "There is no health and safety issue here," he says. "There is no environmental issue here."

In any case, Optiflex appears to be safe. The testing arm of the International Association of Plumbing and Mechanical Officials has declared that cross-linked polyethylene meets the standards for pipes carrying hot and cold drinking water set by the American Society for Testing and Materials. Optiflex has also been approved by Building Officials and

BARBARA KITA BURCH

Code Administrators International, after whom many Eastern states pattern their codes, and by the Southern Building Code. Under a different brand name, the plastic has been sold throughout the United States for eight years, and 10 states have approved its use for drinking water. It enjoys wide use in central Europe for drinking water, and in Switzerland, where it was introduced in 1984, it commands 60 percent of the market.

Many of the safety concerns that prompted California's environmental review don't even apply to Optiflex. For example, the plastic-pipe study looks at the possibility that glues used to link CPVC and polybutylene pipes might seep into the water they carry. The report also addresses inhalation and absorption of chemicals from those glues by workers. But Optiflex doesn't use glues. It is held together with brass-ring compression fittings, which Welsh describes as a "more sophisticated version of what connects your garden hose to your spigot."

Special interests aren't above using environmental law to guard their turf: When polyethylene was first used for milk bottles, cardboard companies pressured Minnesota officials to ban it on environmental grounds.

Plumbers don't find much work hooking up garden hoses, however. And therein may lie the source of the Pipe Trades Council's opposition. Regarding the introduction of plastic pipe, Pitts says, "My father was a master plumber, and he said, 'Anybody with a hacksaw and a can of glue can be a plumber if they ever allow this stuff to be used.' Virtually anyone can go down to the hardware store today and buy that material and put in a sprinkler system." Like earlier plastic piping, Optiflex is relatively easy to install, requiring less time and fewer workers than metal pipe.

This would not be the first time CEQA was used to protect union jobs. In 1991 the Santa Clara County Transit District wanted to cut bus service. The Amalgamated Transit Union, Local 256, filed suit under CEQA, claiming that a reduction in bus service would lead more people to drive cars, thereby producing a "significant effect on the environment."

Nor is California the only state where special interests have used environmental legislation to guard their turf. In 1977, when polyethylene was first being used for milk bottles, the Minnesota legislature, under pressure from cardboard interests, banned the material on environmental grounds. A lower court threw out the law, saying the intent was to protect jobs, not the environment. The U.S. Supreme Court reversed the decision, ruling that, as long as the legislature's ostensible goal was "rational," the courts could not deem it phony.

Polyethylene lost then, and it looks like it will lose again. Pitts isn't optimistic about the future of Optiflex. Even if Welsh can get Optiflex included in the next version of the UPC, the state can't allow expanded use of plastic pipes until the 1982 environmental impact report is completed. And the report is only evaluating the two kinds of plastic included in the 1982 UPC—not Optiflex. Cardozo, the union attorney, says the Pipes Trades Council may very well press for a separate environmental impact report on Optiflex. Even if the UPC includes Optiflex, he says, the product must be shown to last as long as iron or copper pipe because failure of a pipe can expose people to sewage, thereby making performance an environmental issue.

This entire process seems a maddening irrelevancy to Welsh. He feels he has done his job. He has a product that is safe, inexpensive, and superior to the materials now being used for water pipes. But as Taylor explained, Welsh is naive if he thinks those credentials are enough to get Optiflex onto the market in California.

Jacob Kramer is REASON*'s 1993 Burton C. Gray Memorial Intern.*

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BAD EXAMPLES

BY JONATHAN CHAIT

"SEXUAL AND RACIAL HARASSMENT IN U OF M SOCIOLOGY DEPARTMENT," read the headline of a flyer distributed last spring at the University of Michigan. Students in Sociology 510, a required intro-level graduate class, had made the charges against David Goldberg, a professor of sociology who taught the course during the 1992–93 school year.

The accusations against Goldberg, and the Sociology Department's reaction to them, show that even tenured professors can no longer count on the protective shield of academic freedom when faced with challenges from politically powerful students and junior faculty members. In fact, professors with unpopular views may find the officials who are supposed to defend academic freedom apologizing for it instead.

The Goldberg controversy was not the first time the department had seen such accusations. In 1989 Professor Reynolds Farley had suspended his course on the history of race relations after several campus activists charged him with racism. The evidence: examples he used in class to demonstrate the history of racial conflict—a description of Malcolm X that called him a "pimp," quotations by a nativist senator deriding Mexicans as lazy, and the like.

Farley, a liberal who has dedicated his career to understanding and combating racism, did not in any sense endorse the material, which he used to demonstrate the persistence of racial stereotypes. Yet in the charged atmosphere of the University of Michigan, Farley became a symbol of racism and the unwilling focal point of campus debate. A soft-spoken and sensitive man, Farley concluded that he could not teach the course in such a politicized environment. Four years later, he remains in the department but steers clear of teaching in the area in which he is considered a national expert.

Goldberg has enjoyed less support from students and colleagues than Farley, due mainly to his abrasive personality.

Sociologist David Goldberg: His politically incorrect statistics turned students against him.

Philosophy professor Carl Cohen, who defended Goldberg in an impassioned letter to *The University Record*, a faculty newspaper, described him this way: "A powerful scholar whose very prickly manner has long irritated colleagues and students alike, he simply will not suffer fools without response. He has no patience with incompetence; hypocrisy he treats with open contempt."

Some of Goldberg's detractors use somewhat cruder language. All agree that this is not a man who pulls punches. One of his recent memos begins:

"TO: The Chair, The Executive Committee, Sociology Faculty

"FROM: David Goldberg

"RE: PARTICIPATION IN THE CURRENT WITCH HUNT, STAR CHAMBER, REIGN OF TERROR, STALINIST PURGE"

The "witch hunt" followed a semester of conflict between Goldberg and his students. Although Sociology 510 is a statistics course, students taking it often examine issues involving race and gender. In March, several students who objected to the way Goldberg handled these issues sent a lengthy, unsigned letter to the Sociology Department, the Affirmative Action Office, and university President James Duderstadt. The letter cited several parts of the course as particularly offensive:

- A statistical breakdown of mortgage applications by blacks and whites at a Detroit-area bank. The study demonstrated that approval of mortgages was based on credit ratings, which were better on average for whites. Once differences in credit ratings were taken into account, there was no correlation between race and likelihood of approval.
- An examination of the claim that women earn 59 cents for every dollar that men make. The study broke down mean income for each sex by age, education, and marital status. A table showed that while female incomes overall are only 53 percent of male incomes, the "discrimination index" ranges from 51 cents to the dollar in some categories to 93 cents in others. The example concluded, "Do you really think 59 cents is a fair representation of sex discrimination in wages?"
- A complex analysis of SAT scores. A major point of the study was to prove that there is *no* correlation between race and SAT scores when other factors are taken into account.
- A cartoon, included with course materials, poking fun at statistics. The cartoon shows a caveman chiseling a pair of dice. A woman asks the caveman, "What kind of childish nonsense are you working on now?" The letter described this as a sexist portrayal of women's mathematical abilities, adding, "His use of this cartoon, particularly in conjunction with derogatory comments, constitutes not a form of communication (i.e., giving information), but rather a political act for which he is accountable."

The letter argued that "Dr. Goldberg used data sets, cartoons, and lectures in order to vent his own political, ideological, and personal frustrations (with affirmative action, for example) on students in the classroom. The obvious target for these attacks were students of color and women." The students did not claim, however, that

BOB KALMBACH/UNIVERSITY OF MICHIGAN

the statistical examples used by Goldberg were inaccurate. Doesn't demonstrable truth constitute an ironclad defense against accusations of racism and sexism?

Not necessarily, says graduate student Rusty Bush, who took Sociology 510. In-class examples, although true, may be racist and sexist "if they lack sensitivity and analytical rigor." For example, he says, while Goldberg's statistics on male vs. female pay may be accurate, they fail to consider the institutional sexism inherent in the other factors, such as education, that partially account for the income discrepancies. By neglecting to consider this sexism, Goldberg's study begs the question and minimizes the oppression faced by women.

Although Goldberg is charged with creating a hostile atmosphere for women and people of color in his class, nobody has suggested that he treats these students any differently. Sociology graduate student Patrick Ball wrote to *The University Record*: "Legal scholar Issac Balbus points out that if citizens are fundamentally unequal in some respect, then perfectly due process will perfectly fairly reproduce that inequality. From my understanding of the character of Sociology 510, this is what Prof. Goldberg has done....If students come from traditionally excluded groups, Prof. Goldberg's technique might easily be felt as an academic version of social exclusion, a statistically disguised version of the hate they overcame to arrive here." Not only is equal treatment of all students no defense against charges of racism and sexism, it may actually confirm these accusations.

A week after the accusatory letter was sent out, several of the aggrieved students met with Sociology Department Chair Howard Schuman. Schuman, who has since resigned as chair, declined my request for an interview, and the university has not released the names of the students who met with him. But the minutes to the meeting, which I obtained from Goldberg, provide insight into the political dynamics of the department and the pressures that have led to the erosion of academic freedom on American campuses. They show a university department head intimidated by students into apologizing for the safeguards that allow people with unpopular views to remain at what is supposed to be a bastion of free inquiry.

Schuman began the meeting by promising that Goldberg would not teach the course in the fall, although the Sociology Department would not pursue the charges of racial and sexual harassment. The minutes summarize his comments: "I showed cartoon to someone sensitive on gender issues and she didn't think it sexist....Known David a long time—not a close friend. Gratuitous use of material insensitive. If students want to pursue charges they can."

Schuman criticized the students' decision to submit the letter unsigned, arguing that this caused some faculty to "perceive

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this as attack on academic freedom." He did not endorse such sentiments but said that anonymity was "not the best way to go about it."

The students reacted angrily. The minutes read: "Alarmed by reactions, you've spoken in a chastising way, not entirely productive." Following more criticism, Schuman was on the defensive: "If it isn't obvious, I'm opposed to sexism and racism and discrimination on sexual orientation. I was a member of [missing], picketed in angry white areas, never did go south though....Our views are very different, David and mine."

Once the question of Schuman's own sensitivity had been raised, a student, identified as "Tracy O," suggested that the grievances did not stop with Goldberg: "What I get concerned about is that we're focused on David and not the rest of the department." At this point, the students seized the momentum. No longer was Goldberg's fate a matter of question; Schuman began apologizing for even allowing Goldberg to teach the course in the first place.

"It seems clear that intimidation, fear, anger was created," said Debbie B, apparently oblivious to the irony of her complaint. "I wonder if we could go from that perspective: what can be done?"

Schuman: "I agree it's intimidation. I agree. I told you what would be done. Tenure...it's a big problem for the Department, what can be done?"

Debbie B: "How could he have been allowed to teach it?"

Schuman: "I don't know. It was a mistake, an honest mistake I believe. Lot happens in organizations that's related to inefficiencies."

Schuman, still backpedaling, also recanted his decision not to charge Goldberg with racial and sexual harassment: "I shouldn't rule out pursuing them. I guess there is a lot of ambiguity on racism, sexism....To the extent that—most men are sexist, all whites are racist—to the extent that he went beyond that in a way provable to someone outside the class...it's hard. He thinks I'm a bastard."

Diego J: "With the cartoon he said, 'I realize that this cartoon may be sexist' but put it up anyway."

Schuman: "First time I heard that. You weren't in the course. He is a very provocative person. He doesn't realize it's sexist." During his initial statement, of course, Schuman had announced that a feminist friend had pronounced the cartoon nonsexist. Apparently he had become sensitized during the course of the meeting.

A student, "Shelly B," went after Schuman again, trying to nail down a promise to run Goldberg out of the department permanently: "You say 'students you respect' spoke with you. Respect is a two-way street. Are we going to do anything about his insensitivity problem? Eight years from now he can teach it again. He has tenure. He can stay here 'til he dies!"

Goldberg offers his defense against charges of racism and sexism in his statistics class with charts and figures, demonstrating that there was no correlation between grades and race or gender. "I taught a good course," he says bitterly. "I don't deserve to be abused for that."

Here Schuman finally mentioned the question of academic freedom: "It's a difficult problem. I agree with much of what you said. Tenure is a difficult problem. In a class I show a film about McCarthyism, tenure, academic freedoms. Tenure gives protection but also protects insensitivity. There are other sanctions that apply. I can only speak in a limited way on that."

Shelly B: "You mean it can go unchecked?"

Schuman: "He's not allowed to teach the course he most wants to teach [Statistics 510] or any required courses." Schuman, who teaches sociology undergraduates about academic freedom, did not bring the issue up again.

Following criticism from senior faculty members, Schuman reduced Goldberg's punishment somewhat, splitting the course into two sections. "With regard to David Goldberg's teaching, as a tenured faculty member he continues to teach courses in the department," he wrote in an April 30 e-mail message to the co-chair of the sociology graduate students. "His courses are either elective, or where they are required courses students may choose to take the course with him or with a different instructor." Dividing the 35-person class into two sections complied with the students' demands by removing Goldberg from required courses and tacitly admitting his guilt.

Goldberg, a great believer in empiricism, attempts to present his defense just as he taught his class: logically, meticulously, interspersed with charts and figures to demonstrate his points. He offers extensive data, for example, demonstrating that there was no correlation between grades and race or gender in his class. Yet he cannot detach himself from this material. His voice wavers when he speaks. "I taught a good statistics course," he says bitterly. "I don't deserve to be abused for that."

Goldberg does not speak with many of his colleagues, some of whom, he feels, sold him out. (Even before the accusations, the department was divided into hostile factions, with younger, highly political faculty members set against their older, more traditional colleagues.) But Goldberg has received sympathy from several faculty members, including his friend Reynolds Farley.

Since he suspended his course in 1989, Farley says, he has witnessed a "chilling effect" on professors, a process he compares to the McCarthy era. He has remained in the department since 1989, waiting for the chance to teach his speciality in a more tolerant campus atmosphere. Asked if he is ready to resume teaching race relations, he responds, "After what happened to David Goldberg, I'm not going to petition to return."

Jonathan Chait is a free-lance writer and University of Michigan senior.

POLITICAL SCIENCE

BY RONALD BAILEY

Last spring physicist William Happer found out what happens to federal scientists who ask the wrong questions. He was fired.

Happer, director of energy research at the U.S. Department of Energy for two years, was asked to leave at the end of May. Although he was a political appointee, he had expected to remain until his replacement was nominated, since the Clinton administration had asked him to stay on in January. But he was pushed out two months beforehand. "I was told that science was not going to intrude on policy," he says. Now the DOE's former chief scientist is back at Princeton.

Happer made the mistake of crossing Vice President Al Gore, the Clinton administration's ranking environmentalist. In April, Happer testified before the House Energy and Water Development Subcommittee on Appropriations. "I think that there probably has been some exaggeration of the dangers of ozone and global climate change," he said. "One of the problems with ozone is that we don't understand how the UV-B is changing at ground level, and what fraction of the ultraviolet light really causes cancer."

Happer's cautious testimony was at odds with Gore's alarmist views. "Like an acid," Gore warns in his tome *Earth in the Balance: Ecology and the Human Spirit*, chlorine from man-made refrigerants called chlorofluorocarbons (CFCs) "burns a hole in the earth's protective ozone shield above Antarctica and depletes the ozone layer worldwide." Gore predicts that ozone depletion will damage crops and raise skin-cancer rates.

Gore's expectation is superficially plausible. Stratospheric ozone stops much of the sun's ultraviolet-B light from reaching the earth's surface, where excessive amounts can harm plants and animals. Sunburn is the type of UV damage with which most people are familiar. And recent satellite data indicate that ozone declined by 3 percent to 5 percent over the United States and Europe between 1979 and 1991.

ROBERT MATTHEWS/PRINCETON UNIVERSITY

William Happer: fired by the Energy Department for questioning Gore's line on ozone

But such a small decrease is hard to extract from the satellite data, since ozone levels vary widely depending upon seasons, latitude, and sunspot activity. (See "The Hole Story," June 1992.) For example, the amount of UV naturally reaching the ground in Florida is twice as great as that in Minnesota. A 5-percent depletion of ozone would increase UV-B exposure by the same amount as moving a mere 60 miles south. Few people worry about moving from Philadelphia south to Baltimore because of the resulting increase in UV-B exposure.

In any case, if stratospheric ozone is declining, more UV-B sunlight should be reaching the earth's surface. But there's no evidence that the planet is experiencing an increase in surface UV-B, and this is what puzzles Happer. "We have lots of lovely measurements of upper layers of ozone in the stratosphere, but when we look around at what we know about ultraviolet light, the data is very sparse and what data we have shows very little change," he testified. "If anything, it shows a slight decrease." Researchers have found that the amount of UV-B reaching the surface of the United States has declined by between 5 percent and 18 percent over this century.

What's going on? Perhaps UV-B is being blocked by industrial haze or an increase in cloud cover. Whatever the cause, it seems that such a contradiction between the satellite data on ozone and ground measurements of UV-B levels cries out for further investigation. At least that's what Happer thought.

"Why not measure directly the thing that worries you, which is UV-B at the surface, not just reductions in stratospheric ozone?" he asks. DOE, under Happer's direction, developed an Ozone Project to build an improved network for measuring UV-B at ground level. But Happer soon discovered that's not the way science works in Washington, D.C. He says the ozone alarmists in the Clinton administration "want to declare victory and make sure that no one second-guesses them."

Happer's problems were all the worse because he had earlier tangled with America's ozone czar, Robert Watson. Watson was the chief scientist for NASA's Mission to Planet Earth program and served as the head of the Ozone Trends Panel. He is also a favorite of Gore's. In his book, Gore praises Watson for his "steadfast work" on stratospheric ozone. And Watson has now reaped his reward: He has been nominated to become associate director of environment in the White House Office on Science and Technology Policy.

Happer recalls a run-in he had with Watson during a meeting last year of the Federal Coordinating Council on Science, Engineering, and Technology, chaired by Allan Bromley, President Bush's science adviser. Watson made a scary presentation to the council in which he warned that ozone depletion would lead to perilous ecological problems and increases in skin cancer. Watson suggested that an "ozone hole" could open up over Kennebunkport, Maine, Bush's vacation home.

Atmospheric scientists think chemical reactions involving CFCs are responsible for the infamous "ozone hole" over Antarctica, a 50-percent drop in ozone levels

during September and October. Chlorine released from CFCs destroys ozone in very cold stratospheric clouds in the presence of springtime sunlight over Antarctica. Ozone destruction stops once temperatures warm up, and ozone returns to near-normal levels during the summer months.

At the meeting, Happer angrily protested Watson's "exaggerations." He pointed out that during the Antarctic ozone hole the amount of UV-B light reaching the surface is far less than that reaching the surface at the equator. Happer noted that the richest fishing area in the world, just off the coast of Ecuador, receives "a thousand times more UV-B radiation than do the oceans around Antarctica during the height of the 'ozone hole.' Yet many of the same species of phytoplankton thrive in both areas with little or no apparent damage." Watson backed down from his most outrageous assertions. But this dispute earned Happer a powerful enemy.

Happer believes that others in Gore's coterie may have been out to get him. "I was told that [Kathleen] McGinty has an enemies list and that I was on it," says Happer. McGinty, a legislative assistant to Gore when he was in the Senate, is now the director of the White House Office on Environmental Policy.

The data actually show a slight increase in ozone, says Happer. And the amount of UV-B light reaching the United States has in fact declined between 5 percent and 18 percent this century.

Not only did Happer question the administration orthodoxy on ozone depletion, he also questioned how serious the biological effects of increased UV-B might be. "A thinner ozone layer allows more ultraviolet radiation to strike the earth's surface," Gore warns in *Earth in the Balance*. "Many life forms are vulnerable to large increases in this radiation, including many plants."

But Happer notes that recent work at the Brookhaven National Laboratory shows scientists have been seriously overstating the harm that UV-B causes plants. The Brookhaven biologists exposed alfalfa seedlings to UV-B radiation and then measured the damage to the seedlings' DNA. They found that UV-B damage to the alfalfa was less than half that of the widely used baseline for UV-B damage in plants and between 10 and 100 times less than the damage found in a standard test using unshielded DNA. In a report published in the August 1992 *Nature*, they wrote: "Our results indicate that plants are not among the most sensitive biological targets" for UV-B. Consequently, the threat posed by reduced stratospheric ozone to plants is far

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Our New Health Care Reader Doesn't Agree with this Prescription

The Clinton administration's plan for health-care reform is heavy-handed government control of the health-care system. But it seems to be missing a few things the Clintons think are unimportant. Things like personal choice, individual decision making, and freedom from oppressive government regulation.

Healthy Disagreement with the Status Quo
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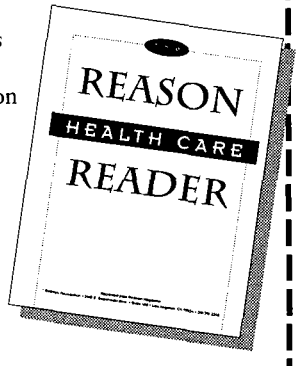

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less than the eco-alarmists have claimed.

This good news has not been greeted with universal acclaim. Happer says that one of the Brookhaven researchers "got anonymous phone calls late at night at home calling her a 'Reaganite fascist pig.' "

Happer describes the officially accepted approach to climate policy this way: "When you ask this gang overseeing ozone depletion and global warming how much two plus two is, they first ask, 'Why

Instead of policy being guided by factual information, scientific facts are being forced to fit the environmental policy requirements of certain politicians, bureaucrats, and activists.

do you want to know?' Then you say, 'Well, I'm interested in finding out what's happening to the ozone layer, and I thought the answer would help.' Then they say, 'Well, how much do you want it to be?' "

In the worst cases, science has been turned on its head. Instead of policy being guided by factual information, the facts are being forced to fit the policy requirements of certain politicians, bureaucrats, and activists. "With regard to global climate issues, we are experiencing politically correct science," Happer says. "Many atmospheric scientists are afraid for their funding, which is why they don't challenge Al Gore and his colleagues. They have a pretty clear idea of what the answer they're supposed to get is. The attitude in the administration is, 'If you get a wrong result, we don't want to hear about it.' "

Contributing Editor Ronald Bailey is the 1993 Warren T. Brookes Fellow in Environmental Journalism at the Competitive Enterprise Institute. His book ECO-SCAM: The False Prophets of Ecological Apocalypse *was published by St. Martin's Press this year.*

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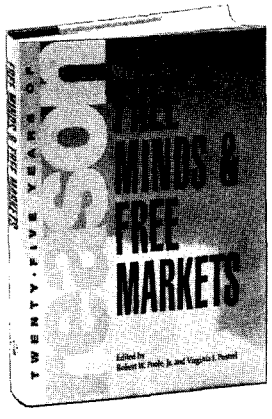

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RAGGED RUSSIA

BY MARTIN MORSE WOOSTER

Four years after the fall of the Berlin Wall, the nations that used to be the Soviet Union and its satellites have become as unpredictable as any in the world. Who would've suspected that the West would cheer as President Boris Yeltsin crushed his rebellious parliament?

Russia and the nations of Eastern Europe have become places where anything is possible. Consider: The Constitutional Democrats ("Kadets") have been revived as a Russian political party, 75 years after their last appearance as weak-willed social democrats who were crushed by the Bolsheviks in the 1917 Revolution. Writing in the August *Chronicles*, the Foreign Broadcast Information Service's Wayne Allensworth says the Kadets and their allies in the Christian Democratic Party see themselves as "traditionalists who fear, among other things, the secular Westernizing of Russia by the youthful cosmopolites of Yeltsin's 'team' and the concomitant loss of what remains of Russia's national identity." The Kadets, says Allensworth, see themselves as part of the conservative "white" opposition to Yeltsin, in contrast to the "red" communists or the "brown" fascists.

The once-mighty Russian military, observes the August 28 *Economist*, is in serious disarray. Ships don't go on training exercises for lack of fuel, and one colonel complains that he can't schedule training exercises because there aren't any light bulbs at his base, except for the one that he takes home each night to make sure that it isn't stolen. The amount Russia spent on defense procurement fell by 32 percent in 1991 and an additional 68 percent in 1992. The Soviet Union bought 3,200 tanks in 1988; Russia acquired 20 tanks in 1992.

Moreover, Soviet youth are rebelling against conscription. In the first part of 1993, 95 percent of the young men who were given draft notices in the Moscow military district dodged the draft. Russian authorities prosecuted 11 percent of these draft dodgers and convicted 0.18 percent of those prosecuted. On May 19, the Russian parliament passed a law that allowed 84 percent of the 1.8 million men previously required to serve to avoid enlistment and an additional 8 percent to serve in the successors to the KGB rather than the armed forces. In 1993 the Russian military will have 185,000 new conscripts—and will discharge 580,000 draftees whose terms have expired.

As a result, observes Charles Dick of Britain's Conflict Studies Centre, except for the strategic rocket forces (which guard Russia's nuclear arsenal) and a few elite regiments, the Russian "armed forces are no threat to any organization more combat-ready" than the Girl Scouts.

Socialist realism has collapsed, says Andrew Solomon in the July 18 *New York Times Magazine*. Russian youth don't even pretend to adore Lenin and Stalin any more, Solomon says; instead, it's now possible, at least for some, to live lives as wild as those in New York's East Village or the hip parts of San Francisco. Drug use is increasing; while hashish is still expensive, there are plenty of potent psychedelic mushrooms to be found in the forests around St. Petersburg. Not only do the Russians now have "rave" concerts, there are even Russians who make their livings as Marilyn Monroe impersonators.

The ideals of communism, says Solomon, have been replaced by "a system of values whereby everyone has an eye only on his own progress." Russia is, in his opinion, a "country now run on the chance alignments and misalignments of hundreds of thousands of different, singular, individual agendas."

These "individual agendas" are not limited to private life. As Bogdan Szajowski, a political scientist at the University of Exeter in England, observes in the August *World Today*, communism was an intellectual superglue; it not only bound the individual to the state, it forced ethnic groups to live together that would normally have sought independence. The collapse of communism not only led to the breakup of the Soviet Union but could also lead to the breakup of Russia.

Szajowski estimates that, as of mid-1993, there were 204 ethnic conflicts within the borders of the Russian Federation. Russian President Boris Yeltsin has far less clout in these border areas than did his predecessors. Regional administrators formerly appointed by Moscow are now elected, and they are more loyal to the voters than to the central government. These administrators, predicts Szajowski, could turn into warlords heading their own republics, and Russia could devolve into a league of nations as powerless (and as meaningless) as the Commonwealth of Independent States.

Most Sovietologists did not predict today's world, with the Soviet Union disintegrated into hundreds of tiny shards. In a thoughtful piece in the Spring *National Interest*, Peter Rutland, a Wesleyan University professor of government, reports that he decided to study the errors of Sovietology by reading the 87 U.S. dissertations written between 1976 and 1987 on the domestic politics of the Soviet Union. After digesting this unappetizing feast of words, Rutland found that the graduate students, like established Sovietologists, accepted one of five possible scenarios for the Soviet Union's future.

About 60 percent thought that Soviet communism would become more liberal but that communism would still prevail. Another 25 percent thought that the Soviet Union would be seized by reactionaries, or that it would collapse in a languorous manner similar to that of the Ottoman Empire, which took nearly a century to expire. The correct answer, that the Soviet Union would collapse after the failure of reforms, says Rutland, was given by "virtually no one." Only

Zbiegniew Brzezinski, Martin Malia, *London Times* columnist Bernard Levin, and the writers in an anthology edited by Alexander Shtromas and Morton Kaplan correctly predicted how the Soviet Union would die.

Rutland identifies two reason for the failure of Sovietology. First, accurate information about life under the rule of Brezhnev or Andropov was very hard to obtain. Much of the time, scholars could use only the information available to them in the United States, including *Pravda* and biographies of Politburo members. In the late 1970s, for example, several dissertations were written on material generated by Ohio State's Soviet Elite Perceptions project, which used CIA grants to conduct an exhaustive content analysis of Politburo speeches. Given the lack of interviews and other raw data, says Rutland, it's easy to see why much Sovietology was "nonsense on stilts."

But Sovietology also suffered from "disciplinary groupthink." Scholars on the left and right falsely assumed that a "Soviet system" existed that was free of factions or partisanship. Soviet observers assumed that *perestroika*, for example, was simply a modification of the exiting order, not a symptom that communism was on its deathbed. Since they were obsessed with the battles in the Politburo, Rutland observes, most Sovietologists missed many of the reasons why communism became unstable as power gradually slipped away from Moscow to the republics. Thus Sovietology failed to predict change, he says, "not because of a lack of sound methodology or a sinister political conspiracy to distort reality, but because of a failure of imagination."

Given the way that groupthink dominates the study of Slavic nations, it's worth questioning the current conventional wisdom that Russia should be bailed out with billions in Western aid. In asking whether Russia should be preserved, argues Steven Rosefielde in the summer *Orbis*, we're misunderstanding history and asking the wrong questions about how our money should be used.

Rosefielde, an economist at the University of North Carolina, Chapel Hill, notes that Western planners cite two historical examples when they propose billions for Russia: the Marshall Plan of the 1940s and the punitive measures imposed on the losers of World War I that ultimately led to fascist and national-socialist states. But these lessons from history aren't the right ones, says Rosefielde, because the Cold War wasn't really a war; NATO forces don't march in Red Square, and it is beyond the ability of the West to impose a stable democracy in unconquered Russia. There is no Douglas MacArthur to act as President Clinton's proconsul in Moscow.

Since the West did not triumph *militarily* in the Cold War, says Rosefielde, it has "to proceed by indirect means, cajoling and bribing the Commonwealth [of Independent States] to institute democratic rule and market capitalism." But the bribes of foreign aid aren't helping the people, he argues. Rather, they're going to Communist-trained bureaucrats who prefer "catastroika" and "kleptostroika" to capitalism and democracy. Instead of capitalism, these wealth-seeking bureaucrats prefer to mire entrepreneurs in red tape and pointless rules, leaving Russia and the other pieces of the former Soviet Union with an economic system that consists of "a degenerate form of state socialism in which the nomenklatura capitalizes on its political power, and muddles through without the benefit of planning or markets. Its performance characteristics appear to be far worse than the system it has replaced, and certainly will not provide the international security benefits advocates of a CIS Marshall Plan suppose."

Rosefielde is too pessimistic. Certainly aid that works to dismantle the nuclear arsenal of the Russians, Ukranians, and Kazakhs is money well spent. Western strategists should worry about any conflict in Eastern Europe that might result in a nuclear confrontation.

But the continuing turmoil in Russia's military, observes Gabriel Schoenfeld in the September *Post-Soviet Politics*, means that Russia's military strength will be weak for a decade. Currently Russia owes its armed forces 2 trillion rubles in promised funding, and until it gets its finances in order, the new Russian volunteer army will not be a threat to the West. In a decade, Schoenfeld predicts, Russia's military will be a reorganized, all-volunteer force that will be far smaller than the Red Army. Yet while such a force might be able to defend Russia's interests on its frontiers, it's hardly likely that such a force will threaten Western or Central Europe. The case for American forces in Europe—or for NATO's continuing existence—is quite shaky.

Continued reductions in Russian government spending will do more to aid that nation than any Western subsidy. In the long run, Russian entrepreneurs will do more to help their nation than any GS-15 bureaucrat in the Agency for International Development or the National Endowment for Democracy.

Contributing Editor Martin Morse Wooster is a visiting fellow at the Capital Research Center.

CHIP BOK

HILLARYOUS

BY THOMAS W. HAZLETT

My query: When a member of the female species rises to political prominence and begins to seriously influence government policies and, soon thereafter, our lives, is the polite response:

(a) to examine the prospects for progressive change under the proposed reforms?

(b) to debate the merits, pro and con, of alternate options?

(c) to research the history of similar ideas and to chart, as the evidence will allow, how they measured up to their promises?

(d) to gush about the amazing prospect that a *woman* could offer up any detail-laden proposal to begin with?

A good thing this wasn't an SAT question, because using the trusted process-of-elimination multiple-guess method, I had actually discarded just one of the possible answers—(d)—only to find that according to all the people who count (at least enough to be on TV before anyone else is awake on Sunday morning) that it is absolutely the correct answer. In fact, none of the others is even theoretically feasible!

Hence, one tuned into the tough, hard-hitting political dissection of Hillary's testimony on the health care plan before the relevant congressional committees—only to be greeted with Tim Russert of NBC's *Meet the Press* oozing: "Moms are smart, too!" Well this certainly implies that one had reason to suspect that mama wasn't quite bright enough to figure out all that complicated Big Issues stuff, and I am truly shocked and amazed at the premise. I long ago discovered what anyone paying the slightest attention had already: that women possess what, under the antitrust laws, would be considered a *per se* monopoly share of certain forms of the highest and most valued intelligence known (on rare occasions) to man. Hence, the widespread astonishment at the revelation that they can know and/or remember lots of little details about health care reform reveals a bizarre take on the human experience.

But there it was for all the world to gag on. The Democrats swelled with pride as their little lady spewed forth on the Health Care Plan. Republicans, not daring to be caught in the press's sexist-seeking crosshairs, competed to out-praise the "remarkably well-informed First Lady." The fawning over Mrs. Rodham-Clinton was the most undiluted form of chivalry witnessed since the Pleistocene epoch.

It all comes down to sexism—Bill and Hillary's. They are the ones who have, with great care, scripted the subtext: Any criticism of Clinton's health care proposal meets with the quick and certain, "You brute! Hillary stayed up 100 nights in a row, taking time away from her busy schedule as wife and mother...and you sneer at her work! You pig! Why, you're destroying the First Family!"

I waited for some tough health care questions, like, for instance, a description of what the administration's plan actually consisted of. Instead, its details were glossed with the broadest and most impenetrable generalizations by first the White House, then the press. I learned from the public presentations that all Americans would be covered, there would be no real compromises in quality or choice, and it would all save us lots of money. Wow! Moms really are *smart*!

It has been the cynical privilege of the Clinton presidential campaign, now somewhere in its third year, to play Hillary either as adoring wife or daring feminist crusader, as photo ops dictate. The many faces of Hillary (not to mention names) are but another aspect of the administration's efforts to raise our fashion-consciousness. Rather than battle for their programs on the basis of the ratio of their costs to their benefits, the Clintonites have mastered process-illusion.

Diversionary tactics are key: You saw the evil rich emerge grotesque and bloated from the '80s? Poof! Your middle-class wallet was gone. (And you don't even know it, you poor sap who thinks the person who is *assessed* the tax is the only one who *pays* the tax.)

Process-illusion is the trick of convincingly posing as Good Government while all about are screwing up. Image to the public: working so very hard and caring so very much. Substance of your regime: Taxes go up, 4 percent real growth collapses to 1 percent, and U.S. servicemen and women are humiliated in an idiotic food-delivery scheme half a planet away.

"I feel yo' pain" is the mantra of an administration that bounces from press conference to town hall to share the new plan for free health care while Somalis—the announced starvation victims targeted for U.S. humanitarian assistance—drag dead U.S. soldiers through the streets of Mogadishu. How about his pain, Mr. President?—or are you too busy *feeling* it to figure out that the Somalia policy is a spent operation and a worthless slaughter of American lives? Perhaps you remember the genre...or what *were* you doing over in the Olde Country during your college youth?

"Work effort" is the tag line which the Clinton regime believes it must use to defend its hapless results. And so, on a recent campaign stop in California, the president offered that he "had put in countless hours" working to help the Golden State's economy since the Inaugural Parade. The nation's largest state will withstand its 9.5 percent unemployment rate far better knowing the president sleeps hardly at all and that his White House is killing itself—literally and figuratively.

The president cares, the president works like a maniac, the president despises those who made it in the 1980s. And his wife...isn't she quite a woman? All those complex policy issues—and she bakes cookies, too.

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.

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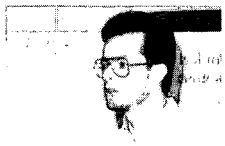
I was ready to quit.

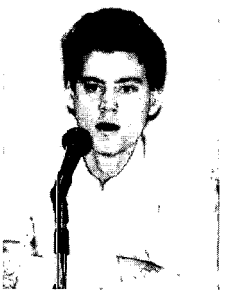
—David Schmidtz

David Schmidtz had just completed his first year of graduate school in philosophy at the University of Arizona. David had only one year of philosophy as an undergraduate and prior to that had worked for five years as a manual laborer. His beliefs in classical liberal ideas were different from those of his fellow students. He felt hopelessly behind and way out of touch. He had lost his teaching assistantship and was about to have his foreign student visa revoked for lack of visible means of support.



Then he received a Lambe fellowship. He was able to continue in graduate school. The support of the Institute for Humane Studies let David know that his ideas were good ones, that there were others who shared his beliefs, and that he could be an intellectual. He is now an associate professor at Yale, working on his second book.

John Majewski will have his Ph.D. in history completed in 1994. The support of Lambe fellowships has enabled John to concentrate exclusively on getting his coursework done. He will finish his degree in five years time, much faster than the average seven to eight years taken to obtain a Ph.D. in history.



As a Lambe fellow, John has had the opportunity to participate in several other Institute programs, including a Career Development seminar, an Advanced History seminar, and the Residential Summer Fellowship program. These programs help build skills and broaden the knowledge and commitment of the students who attend. The Institute also keeps John abreast of pertinent cutting edge work and networks him into the mainstream of his discipline while he retains his classical liberal orientation.

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